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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

*Legislature*



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 8, 1992  
3:50 P.M.

DOCUMENTS DEPT.

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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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12 STATE CAPITOL

13 ROOM 113

14 SACRAMENTO, CALIFORNIA

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18 WEDNESDAY, APRIL 8, 1992

19 3:50 P.M.

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25 Reported by:

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RUSSELL S. GOULD, Secretary  
Health and Welfare Agency

EVE KROTNGER, Counsel  
Legislative Counsel's Office

LISA BRANDT, Chief Counsel  
Department of Health Services

CAROLYN OWEN, President  
Northern California Chapter  
Health Physics Society

DONNA EARLEY, Director  
Radiation and Environmental Safety  
Cedars Sinai Medical Center

ROBERT J. LULL, M.D., Chief  
Nuclear Medicine  
San Francisco General Hospital  
California Medical Association

ED COOK, Vice President  
Operations  
Gen-Probe, Incorporated





APPEARANCES (CONTINUED)

LYNN WALLIS, Manager and Consultant  
Media and Environmental Information Programs  
Health Physics and Nuclear Safety  
General Electric

ERIC LAPALLA, Senior Vice President  
Harding Lawson Associates

RONALD GAYNOR, Senior Vice President  
U.S. Ecology, Inc.

ALAN PASTERNAK, Technical Director  
CAL RAD Forum

DANA GLUCKSTEIN, President  
Americans for a Safe Future

DAN HIRSCH, President  
Committee to Bridge the Gap

ROBERT CORNOG, Ph.D.  
Committee to Bridge the Gap

INGRID AZVEDO, Member  
Unemployment Insurance Appeals Board

MANUEL GUADERRAMA, Member  
Board of Prison Terms





INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
RUSSELL S. GOULD, Secretary Health and Welfare Agency	1
Questions by CHAIRMAN ROBERTI re:	
Legislative Counsel's Opinion on Necessity for Adjudicatory Hearing on Ward Valley Project	1
Suggestion of Opinion from Attorney General	2
Questions by SENATOR MELLO of EVE KROTINGER, Deputy Legislative Counsel re:	
Requirement for Adjudicatory Hearing	3
State Hearing Procedure vs. NRC Procedure	4
Questions by SENATOR MELLO re:	
Willingness to Follow State's Procedure for Adjudicatory Hearing	4
Elongation of Process	5
Possibility of Lawsuits if Hearing Is Denied	6
NRC Approval of Nuclear Power Plants	7
Leg. Counsel's Opinion Clear on Need for Adjudicatory Hearing	8
Intent to Follow Law	8
Difference of Opinion between Counsels	8
Request for Copies of DHS's Counsel Opinion	9
Intent to Vote against Confirmation if Adjudicatory Hearing Is Denied	9
Statements by SENATOR PETRIS re:	





1		
2	Fear of Facing Full-blown Hearing	10
3	Possibility of Court Challenge if Hearing	
4	Is Denied	11
5	Alternative Types of Hearing that	
6	Would Satisfy Requirements	12
7	Lack of Clear Process in Mind	13
8	Need for Open Exchange of Information,	
9	Record and a Finding	14
10	Dislike for Hearing Procedure to Be Labeled	
11	Abuse	14
12	Exposure to Same Delay and Legal Attack	
13	Problems	15
14	Suggestion of Advice from Attorney	
15	General	16
16	Questions by CHAIRMAN ROBERTI re:	
17	Attorney General's <u>Amicus Curiae</u> Brief	
18	in U.S. Supreme Court	16
19	Take Title Provision	17
20	Willingness for Hearing Process before	
21	Administrative Law Judge	17
22	Question of Appropriate Legal Process	17
23	Questions by SENATOR PETRIS re:	
24	Length of Time of License Moratorium	17
25	Authority to Impose Moratorium	18
26	Liability Issue of Take Title Provision	18
27	Questions by CHAIRMAN ROBERTI re:	
28	Process in Attorney General's Office	
	for Opinions	19
	Response by LISA BRANDT, Chief Counsel,	
	Department of Health Services	19
	Nonpolitical Process	20





Statements by SENATOR PETRIS re:

No Need for Second Opinion from Attorney General	21
Response by MS. BRANDT	21
Experience in Administrative Law	21
Flaw in Leg. Counsel's Opinion	22
Applicability of Federal Statutes	22
Liability of Federal Government	23
Ownership of Property	23
View of State Lands Commission	24
Request for Written Opinion from DHS Counsel	24
Verbal Legal Advice Only	25
Federal Ownership Requiring Federal Statutes	25
Bureau of Land Management's Position regarding Ownership of Land	25

Statements by SENATOR MELLO re:

High Regard for Leg. Counsel's Staff and Opinions	28
Political Actions of Attorney General	28
Open up Dialogue on Issues	29
Lack of Willingness to Share DHS's Opinion on Hearing	30
Willingness of Department to Have Adjudicatory Hearing	30
Structure of Hearing	30
Response by MS. BRANDT re:	
No Such Thing as Adjudicatory Hearing as a Concept	31





1		
2	Various Types of Hearings	31
3	Request for Hearing that Includes: Disclosure	
4	of File Information; Cross Examination of	
5	Witnesses; Final Decision on Evidence	32
6	Limited Participation	32
7	Leg. Counsel's Opinion Would	
8	Preclude Limited Participation	32
9	Intent of Legislature	33
10	What is Department Afraid of	33
11	Resolution of Technical Issues Difficult	
12	by Cross Examination	34
13	Hearings on Diablo Canyon Nuclear Power Plant	34
14	Dumping off Farallon Islands	35
15	Response by MR. GOULD re:	
16	Commitment of Governor	35
17	<u>Witnesses in Support:</u>	
18	CAROLYN OWEN, President	
19	Northern California Chapter	
20	Health Physics Society	37
21	Endorsement of Ward Valley Site	38
22	Halting of Research if Site Not Licensed	38
23	Questions by CHAIRMAN ROBERTI re:	
24	Halting of Research	39
25	Volume of Waste Generated	39
26	Lack of Space for On-site Storage	39
27	Divorce Ward Valley Issue from Confirmation	40
28	DONNA EARLEY, Director	
	Radiation and Environmental Safety	
	Cedars Sinai Medical Center	40





Hearing Will Delay Opening of Site beyond Storage Capabilities	40
Researchers Put on Notice to Halt	41
Questions by SENATOR PETRIS re:	
Knowledge of Site at Ward Valley	41
Duration of Site Consideration	42
Willingness to Testify under Oath	42
Various Types of Hearings	43
Current Storage Facilities on Site	44
Questions by CHAIRMAN ROBERTI re:	
Options for Storage if Site not Licensed	44
Questions by CHAIRMAN ROBERTI of MR. GOULD re:	
Reason for Objection to Cross Examination of Witnesses	45
ROBERT LULL, M.D., Chief Nuclear Medicine San Francisco General Hospital California Medical Association	46
Support for Confirmation without Adjudicatory Hearings	46
Need for Radioisotopes in Molecular Biology and Bio-medical research	47
Statement of Director of New AIDS Research Center in San Francisco on Halting of Research without Storage Facility	48
Need for Waste Disposal in Nuclear Medicine	49
Patient Care Will Suffer without Disposal Site	50
Volume of Waste Generated Last Year	50
Six Months of Storage Capacity	50
Consequences of Delay for Adjudicatory Hearings on Ward Valley	51



1		
2	Motives of Opponents	52
3	Questions by SENATOR MELLO re:	
4	Possibility of Court-enforced Delays	
5	without Adjudicatory Hearing	52
6	No Evidence that Protesters are Trying	
7	to Shut Down Nuclear Power Plants	53
8	No Plans at Present to Build New	
9	Nuclear Plants	54
10	Questions by SENATOR PETRIS re:	
11	Influence of Groups to Expedite	
12	Siting Process	55
13	Communication of Urgency in	
14	Letters to Governor	56
15	Support for Adequate Hearings	57
16	Testimony at Hearings	57
17	Further Delay Will Hurt People	59
18	Familiarity with Ward Valley Site	59
19	Questions by SENATOR MELLO re:	
20	Denial of Access to Existing Sites	60
21	Affect on Programs, Research and	
22	Patient Care	61
23	Questions by SENATOR PETRIS re:	
24	Familiarity with Applicant, U.S. Ecology	61
25	Track Record in Other States	61
26	Ownership of Two of Three Existing Sites	62
27	Use of Liners	62
28	Delaying Tactic vs. Scientific Need	63





1		
2	ED COOK, Vice President	
3	Operations	
4	Gen-Probe, Incorporated	63
5	Development, Manufacture, and Marketing	
6	of Genetic-based Diagnostic Test Kits	63
7	Utilization of Radioisotopes	64
8	Urge Confirmation without Link to Ward Valley	65
9	LYNN R. WALLIS, Manager	
10	Media and Environmental Information Programs	
11	General Electric	66
12	State Review of All Issues on Ward Valley	66
13	Federal Mandate to Open Site on 01/01/93	66
14	Termination of Programs only Option if	
15	No Site Exists	67
16	Cobalt-60 Gamma Knife	67
17	State's Economy at Risk if Site Delayed	67
18	Urge Confirmation	68
19	Questions by SENATOR PETRIS re:	
20	Lack of Response as to Why Adjudicatory	
21	Hearings Were not Held Before	68
22	Production Time for Gamma Knife	69
23	Location of Manufacturing Facility	70
24	ERIC LAPALLA, Senior Vice President	
25	Harding Lawson Associates	70
26	Credentials as Hydrogeologist	70
27	Involvement with Ward Valley site	71
28	Definition of Ideal Site	71
29	Moisture Movement at Site	73
30	Infiltration Test	74
31	Occurrence of Recharge	75



## Questions by SENATOR PETRIS re:

Distance to Water Table	75
Source of Samples	75
Occurrence of Tritium at Site	76
Diffusion	77
Correctness of Models Used in Evaluating Protectiveness of Site	78
Discharge of Groundwater to Colorado River	79
Urge Confirmation Independent of Ward Valley	80
RONALD GAYNOR, Senior Vice President U.S. Ecology, Inc.	80
Holding Confirmation Hostage is Travesty	81
DHS's Conservative Approach to Siting	81
Public Involvement	81
Extension of Public Comment Periods	82
Project Focus of Misinformation Campaign	82
Operator is Legal Custodian of Waste	82
Producers of Long-lived Radioactive Waste	83
Inability to Dispose of Waste if Site not Available by 01/01/93	83
Over 500 Sites Will Be Located in California's Urban Areas	84
Lawsuits Inevitable	84
Storage of Radioactive Wastes in Hundreds of Urban Locations	84
Urge Confirmation	85





1		
2	ALAN PASTERNAK, Ph.D., Technical Director	
3	CAL RAD Forum	85
4	Liability Issue	86
5	Responsibilities of Operator and	
6	Disposers under CERCLA Regulations	87
7	DHS Unauthorized to Hold Adjudicatory	
8	Hearing	88
9	Department's Handling of Technical	
10	Issues in Prior Hearings	89
11	Vast Number of Public Hearings	89
12	Composition of Citizen's Advisory	
13	Committee	90
14	Extension of Public Comment Period on	
15	Final EIR	90
16	Court Findings on Question of Adjudicatory	
17	Hearings on Licensure	91
18	Constitutionality Issue before Supreme Court	92
19	California Host State under Southwestern	
20	Compact	93
21	Questions by CHAIRMAN ROBERTI re:	
22	Question of Constitutionality of	
23	Statute	94
24	Focus of Attack on Take Title	
25	Provision Only	95
26	Potential Liability of California if	
27	Safe Disposal Capability not Available	95
28	Urge Confirmation	95
	Statements by SENATOR MELLO re:	
	Action of Supreme Court as Reported	
	in <u>New York Times</u>	96
	Possibilities if Federal Law Overturned	97



Statements by SENATOR MELLO re:

Request for Short Time for Opponents' Testimony 98

Discussion 99

Witnesses in Opposition:

DANA GLUCKSTEIN, President  
Americans for a Safe Future 99

DAN HIRSCH, President  
Committee to Bridge the Gap 99

U.S. Geological Survey Report that  
Aquifer Drains into Colorado River 100

Tritium Migration Issue 100

Repeated Requests for Adjudicatory Hearing  
in Past Years 100

Potential Alternatives if Department Allowed  
to Go Forward without Hearing 101

Proposed Nuclear Reactor in Malibu 101

Diablo Canyon 101

California Farther Ahead than All Other  
States in Siting Facility 102

Need to Safeguard Future Generations 103

Questions by CHAIRMAN ROBERTI to MR. GOULD re:

Department's Willingness to Hold Adjudicatory  
Hearing with Limited Parties 103

Need to Control Timing of Process 103

Need to Limit Number of Participants 103

Consolidation of Witnesses 104

Response by MR. HIRSCH 104

Suggestion that Department and Site Opponents  
Work Out Type of Adjudicatory Process 104





Questions by SENATOR PETRIS of MR. HIRSCH re:

Availability of Medical Expert to Answer Health Issues 105

Medical Wastes vs. Power Plant Wastes 106

Main Concern of Opponents Is Reactor Wastes 106

Nonradioactive Alternatives 106

Storage of Hospital and Research Generated Radioactive Wastes 107

State's Arrangements for Interim Storage 107

Time Requirement of Other States for Disposal Facilities 108

Hope for More Creative Solution 108

Main Concern of Opponents 109

Volume of Medical Waste vs. Reactor Waste 109

Tritium Findings 109

Model's Findings vs. Data 110

ROBERT CORNOG, Ph.D.  
Committee to Bridge the Gap 110

Lethalness of Power Plant Wastes 110

Confusion in Linking Medical Wastes to Power Plant Wastes 110

Questions by SENATOR PETRIS to MR. HIRSCH re:

Halting AIDS Research and Treatment 111

Previous Claims During Nuclear Power Plant Hearings 111

Deadline for All States 112

Prediction of Events when Deadline Occurs 112



1		
2	Need for Committee to Weigh Risk	
3	of Multiple Sites of Urban Storage	
4	vs. Risk to Future Generations	112
5	Publication Date of U.S. Geological Report	113
6	Conclusion and Summary by MR. GOULD	113
7	Challenges Facing Agency	114
8	Responsiveness of Agency and Governor	114
9	Willingness to Work Together	114
10	Statements by CHAIRMAN ROBERTI re:	
11	Desire to Vote for Confirmation	114
12	Hope that Parties Can Agree on Type	
13	of Adjudicatory Process	115
14	Withdrawal of Nomination from Committee	115
15	All-time Record for Length of Confirmation	
16	Hearing	116
17	Discussion	116
18	Motion by SENATOR MELLO re:	
19	Confirmation be Held in Committee with	
20	Chair Empowered to Withdraw Nomination	117
21	Parties Must Meet and Agree on Some	
22	Type of Adjudicatory Procedure in a	
23	Draft Document	117
24	Discovery	117
25	Cross Examination	117
26	Rules of Evidence	117
27	Availability of Leg. Counsel to Assist	117
28	Discussion of Motion	118
	Assurance that Committee Will Meet	
	Again on Confirmation	118
	Committee Action	120





1		
2	INGRID AZVEDO, Member	
3	Unemployment Insurance Appeals Board	120
4	Background and Experience	120
5	Motion to Confirm	121
6	Statement of Support by SENATOR MELLO	121
7	Committee Action	123
8	MANUEL GUADERRAMA, Member	
9	Board of Prison Terms	123
10	Background and Experience	123
11	Motion to Confirm	124
12	Committee Action	125
13	Termination of Proceedings	125
14	Certificate of Reporter	126
15	Addendum: Written Testimony of	
16	ROBERT J. BUDNITZ, President	
17	Future Resources Associates, Inc.	127
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We will not be taking up today the appointments of: William Mayer, Director of Mental Health; Octavia Deiner, Member of the California Transportation Commission; and Benjamin Hacker, Director of Veterans Affairs.

The next appointment to be considered is Russell S. Gould, Secretary of Health and Welfare Agency.

We've heard Mr. Gould before, and we interrupted the hearing pending, I believe, a Legislative Counsel's opinion regarding the Ward Valley adjudicatory hearing, which falls within your jurisdiction. I think we got back an opinion indicating that an adjudicatory hearing is required from our Legislative Counsel.

Have you had a chance, Mr. Gould, to look at our Counsel's opinion?

MR. GOULD: Yes, Mr. Chairman, I have.

CHAIRMAN ROBERTI: Would you like to comment on that?

MR. GOULD: Yes.

We have looked at that, and I think what we have arrived at is an honest difference of opinion between attorneys as to what the legal requirements are in terms of an adjudicatory hearing associated with the licensing of Ward Valley for a low level radioactive site.

In reviewing the case, I've asked the Counsel of the Department of Health Services to look at the case. They have done so. We have gotten input back from the Nuclear Regulatory





1 Commission, who have also confirmed our perspective. We also  
2 have two court circumstances in which they have reviewed the  
3 circumstances which sided, we feel, as far as the Department of  
4 Health Services's perspective in terms of that adjudicatory  
5 hearing.

6 I recognize that there is a legitimate difference of  
7 opinion on this issue, and it's something that the Governor and  
8 I have discussed.

9 I think we have every intent in abiding by the law.  
10 We want to make sure that the process that we complete is one  
11 that meets all the full intent of the law, and provides for the  
12 kind of information so that we can all feel confident that we're  
13 moving ahead in a process with the siting of a facility that has  
14 had full opportunity for the public and for everyone to feel  
15 comfortable with.

16 So, we -- we acknowledge that difference, and quite  
17 frankly, I think it's something that we may need to look to the  
18 Attorney General for or someone else, for some kind of final  
19 resolution as to what is the proper process.

20 We feel strongly that we ought to commit to a process  
21 that's in keeping with the law, and we have a difference of  
22 opinion. I suggest a means to resolve that might be to get that  
23 kind of opinion.

24 CHAIRMAN ROBERTI: You're suggesting we get the  
25 Attorney General's opinion, which I guess is the normal opinion  
26 that's sought out in these cases.

27 Does anybody want to comment? Senator Mello.  
28



1           SENATOR MELLO: I'd like to pursue, there are honest  
2 differences of opinion between lawyers, but I think we are  
3 dealing here with the reality of disposing of radioactive waste  
4 material that non-lawyers, such as scientists and others, are  
5 trying to bring to our attention the danger.

6           I take it, then, and I understand you wrote the  
7 opinion; is that correct? I don't have a question at this  
8 point, but I'm glad you're here.

9           I think her opinion of the question which stated:

10               "The State Department of Health  
11               Services may not issue a license for  
12               the disposal of low level  
13               radioactive waste without  
14               conducting a hearing pursuant to  
15               Chapter 5, commencing with Section  
16               11500, of Part 1 of Division 3 of  
17               Title 2 of the Government Code."

18           Perhaps, Mr. Chairman, with your permission, may I  
19 ask her?

20           CHAIRMAN ROBERTI: Please come forward.

21           SENATOR MELLO: What I want from you, all of those  
22 numbers, we have been talking about an adjudicatory hearing  
23 under the Nuclear Radiation Control Law.

24           MS. KROTINGER: Eve Krotinger, Legislative Counsel.

25           Chapter 5 is our state's Administrative Procedure  
26 Act, and that was the question: is the Department required to  
27 conduct a hearing pursuant to our state's adjudicatory hearing  
28





1 process?

2           SENATOR MELLO: Would this have any relationship --  
3 I learned a little bit about this in the last hearing, but is  
4 this the same adjudicatory hearing we were talking about here  
5 three weeks ago?

6           MS. KROTINGER: Yes, but it's -- our opinion dealt  
7 with the state adjudicatory hearing procedure as opposed to  
8 NRC which is a federal adjudicatory procedure which is governed  
9 by their, you know, laws and regulations.

10           I was referring to our state law.

11           SENATOR MELLO: Would you be willing to follow the  
12 state's procedure for an adjudicatory hearing as set forward,  
13 Mr. Gould?

14           MR. GOULD: Senator, I think the issue is under  
15 what legal basis can we do that? And that's something -- I  
16 have my counsel here, who might be helpful to the extent you  
17 want to get into the legal issues. She may be able to speak  
18 more eloquently than I can.

19           SENATOR MELLO: What I really want to know is if  
20 you're willing to go through an adjudicatory hearing as  
21 described by Counsel here from the Legislative Counsel's  
22 Office?

23           MR. GOULD: Well, Senator, I think we are -- would  
24 be willing to go through a process to allow for --

25           SENATOR MELLO: You didn't hear my question. My  
26 question is, are you willing to go through an adjudicatory,  
27 which I understand allows for a disclosure of the files, and  
28



1 cross examination of witnesses, and other parts here set forth  
2 in our letter here?

3 MR. GOULD: Senator Mello, if I could explain my  
4 answer.

5 We would be willing to go through an adjudicatory  
6 process if it met the conditions that I think the Governor has  
7 given me very clear instructions of which he feels is  
8 appropriate in terms of this process. And that is a process  
9 that provides for a full exploration of the outstanding issues  
10 so that we can reach a comfort level that all the issues have  
11 had an opportunity to be explored and resolved.

12 At the same time, I think we'd have a strong  
13 reservation about going into a process that could be abused,  
14 and that might be abused to the extent that it was merely used  
15 to elongate the decision-making process, as opposed to coming  
16 to a resolution on the issues.

17 To the extent we met the criteria from the  
18 Governor's perspective of truly trying to achieve a good  
19 information flow, and trying to reconcile the outstanding  
20 issues, I think he would be supportive of that kind of process.

21 To the extent that the process was allowed to  
22 structure itself to provide for an elongated process, which  
23 would be potentially abused for the purposes of abusing that  
24 process, I think he'd have very strong reservations about that.

25 SENATOR MELLO: I guess your answer is, you want to  
26 go through the Governor's proposal rather than to follow the  
27 law that we now have here in California and on the federal  
28



1 level.

2           What I want to suggest to you is, because I've seen  
3 a lot, I mean, you can get into court everyday of the year  
4 without hardly any case at all.

5           What I'm suggesting is without any testimony,  
6 before January 1, 1993, somebody's sitting around for eight  
7 years, not doing anything about this to my knowledge.

8           But I could foresee a lot of delays following the  
9 procedure as you've outlined it, because they will get it into  
10 court.

11           MR. GOULD: I don't think there's any question that  
12 the issue of whether or not the state followed the appropriate  
13 procedures could be a question that's addressed in court, could  
14 be a challenged on that.

15           SENATOR MELLO: All right, so what I'm saying is,  
16 it might be faster from my perspective, just listening to the  
17 testimony here last week [sic], if you had adopted to go  
18 through the adjudicatory hearing process, using the federal  
19 regulations, and go through it. It means -- if it's good, it's  
20 going to come out through it. It's going to be disclosed,  
21 evidence will be out. People will be able to cross examine, and  
22 then I think you might be on a fast track to operate and get it  
23 out faster.

24           This process here that you're suggesting could  
25 prolong it for years, and years, and years.

26           The second thing I want to say, from my own  
27 experience, having dealt with -- I have Diablo Canyon in my  
28





1 district, on was sitting on the Resources Committee, where we  
2 heard Sun Desert, and we heard the San Onofre plant, and other  
3 plants, Rancho Seco and Humboldt. All of them plants were  
4 approved by the Nuclear Regulatory Commission, which has a much  
5 higher standard than the State of California. All of them are  
6 -- three of them are closed down now: Rancho Seco, San Onofre  
7 and Humboldt Bay.

8  
9 We are spending more money decommissioning San  
10 Onofre than it cost to build. And the last remaining one,  
11 Diablo Canyon, which plans are being made to decommission it at  
12 some point a few years down the road.

13 So, what I'm saying, even the NRC, which in my  
14 opinion has the most strict criteria, have approved plants that  
15 are now found to be dangerous, and they're being obsolete, and  
16 they're taking, in effect, closing them down.

17 I didn't mention Three Mile Island, also approved  
18 by them, or other plants around the world.

19 In discussing this with people, I went through a  
20 lot of nuclear plants that were up here. I have supported them  
21 because I felt that was the way to pursue a good alternative at  
22 that point, but I just don't want to be part of a generation  
23 that's going to leave as its legacy a radioactive waste that's  
24 going to endanger generations to come. And I think that's  
25 what's on the table here.

26 As I said before, I support you up to this point.  
27 I think you're highly qualified. I think you'll do a great job  
28 as administrator, the job of Secretary.



1                   But all that great job that you can do, and you're  
2 qualified for, can be eradicated if we just misjudge this  
3 decision here today on Ward Valley, don't use proper  
4 precautions to make sure it's completely safe.

5                   That's why I'm disappointed that you are taking the  
6 Governor's approach, but he is one branch of government, and a  
7 co-equal branch with the Legislature, which is us, the third  
8 branch, of course, being judicial.

9                   And I'm -- when I read the Legislative Counsel's  
10 opinion, which is our attorneys for the Legislature, it's  
11 pretty strong. And it says very clearly that you cannot issue  
12 a license for the disposal of this low level radioactive waste  
13 without going through the hearings as they have set forth in  
14 Chapter 5.

15                   MR. GOULD: Senator, I said before, I want to  
16 repeat this very clearly. We will abide by the law.

17                   To the extent that the Leg. Counsel's opinion is  
18 deemed to be appropriate, is deemed to be in fact what the law  
19 provides, I have every intent of following the law, and clearly  
20 the Governor does also.

21                   What I'm suggesting is, there are different  
22 opinions out there, and I appreciate the honesty from which the  
23 Leg. Counsel's opinion was put forward. I'm not denying that.

24                   But I also have what I believe are very legitimate  
25 and honest legal opinions put forth by my counsel that are  
26 trying to advise me as to what I can do within the law.

27                   SENATOR MELLO: Do you have copies of that?  
28





1 MR. GOULD: Pardon me?

2 SENATOR MELLO: Do you have copies of your  
3 counsel's opinion?

4 MR. GOULD: I believe she can share all of her  
5 input with you. She is here.

6 SENATOR MELLO: The question is, do you have a copy  
7 of it?

8 MR. GOULD: I don't have a copy with me.

9 SENATOR MELLO: Okay.

10 Mr. Chairman, I'm sorry.

11 Unless he changes his mind, I do not plan to vote  
12 for your confirmation. I'm just being very firm about it. I'm  
13 going to feel good with myself, and that's what I have to live  
14 with.

15 But I just can't loosely support something -- that  
16 you have every good intention and so forth -- but we're dealing  
17 with the most potent chemicals here, and they have the  
18 potential of wiping out the entire planet.

19 MR. GOULD: Senator, I share your concern about  
20 radioactive waste, and that's why both Dr. Coye, who as  
21 responsibility for this function within the Department of  
22 Health Services, and I, when we took over, didn't just move on  
23 the history and the accumulated information that we had from  
24 the prior Administration. We could have licensed the facility  
25 and moved on last fall.

26 We chose not do that because we wanted to be  
27 prudent, and to make an informed choice, and to satisfy  
28



1 ourselves that we had met every outstanding issue and satisfied  
2 ourselves that in fact we had met those conditions.

3 So, we have not moved forward.

4 SENATOR MELLO: You have not moved forward.

5 Do you think there would have been legal action  
6 taken to hold up your moving forward?

7 MR. GOULD: I can't speculate. I suspect there  
8 would have been legal challenges.

9 SENATOR MELLO: That's right. I've seen them  
10 happen.

11 Thank you.

12 CHAIRMAN ROBERTI: Senator Petris.

13 SENATOR PETRIS: Well, we have got, obviously, a  
14 tough problem here.

15 In view of this conflict or difference of opinion,  
16 we have to seek a way out.

17 I was at the prior hearings and persuaded that we  
18 ought to go for an adjudicatory hearing. And I was wondering  
19 why, even before you came on the scene, why that wasn't done?

20 It raises suspicions that whoever made the decision  
21 back then was afraid to face a full-blown hearing, where, under  
22 the code, a person, any person interested, can request a  
23 hearing and be made a party of the hearing, must be made a  
24 party by the agency. When they have the status of a party,  
25 that means they can engage in the proceedings, participate. It  
26 means they can cross examine, go through discovery, and so  
27 forth.  
28



1                   So, I think that was a bad mistake made back then.  
2  
3       If they had gone the other way, this whole thing would have  
4       been over, and it either would have been operating or not. It  
5       would have been approved or not, and probably gone through the  
6       appellate process.

7                   I'm a little puzzled by the Governor's -- I can  
8       understand the Governor has very strong feelings on this,  
9       because I've talked to him.

10                  One of the problems I have is that he seems to  
11       believe that if you follow the procedures set forth in the  
12       code, that that's an abuse because it takes time. If you go  
13       through the procedure, and then there's an appeal, he can  
14       foresee, you know, a pretty long time before the matter's  
15       resolved.

16                  I would suggest the same thing Senator Mello has  
17       said as a practical matter. From what I can gather in talking  
18       to opponents of that site, or those who want to get a full  
19       hearing so you get all the expert testimony before a formal  
20       tribunal and a formal decision, if you wait until the licensing  
21       is completed, and you make a decision, it's going to be  
22       challenged in a court.

23                  And I think Senator Mello is right. By the time  
24       you run that through its course, you'll undoubtedly take longer  
25       than an adjudicatory hearing, even if you decide we're going to  
26       have a hearing next week or next month.

27                  So, it seems to me, it would be saving time if we  
28       blew away this controversy by going ahead with the hearing.





1           Let me ask what the alternative might be. I'm  
2 looking now at the ingredients of an adjudicatory hearing, and  
3 I'd like to know what would be removed from that and still make  
4 it a viable hearing that satisfies the requirements.

5           The essence of the hearing process would be some  
6 kind of a judge. It would be testimony under oath, and that  
7 would be recorded. The purpose of having it recorded is to  
8 establish the foundation for an appeal, if either side wants to  
9 appeal it. It would mean the right to cross examine witnesses:  
10 their experts, your experts. And then, the issuance of a  
11 formal decision.

12           Which of those ingredients would you find  
13 unacceptable or time-consuming to such an extent that they  
14 ought to be skipped?

15           Do you have an alternative that you can offer that  
16 says: "Well, we're going to essentially comply; we will be in  
17 substantial compliance." We know that means not 100 percent,  
18 but close enough to accomplish the goal nevertheless.

19           Can you give us an idea on that?

20           MR. GOULD: Yes, Senator.

21           SENATOR PETRIS: Excuse me.

22           I told the Governor, if I see a procedure that  
23 satisfies the basic requirements, and at the same time is  
24 quicker, that's fine with me.

25           So, if you can answer that, it would be helpful to  
26 me in assessing the situation.

27           MR. GOULD: Okay.  
28



1                   Well, I think what the Governor has indicated to  
2 me, and I don't know if he shared it with you, but I think he's  
3 willing to be open to a process and to discuss which elements  
4 are agreeable to both parties in terms of what route we ought  
5 to go. So, I don't think that I can give you definitively  
6 every answer, but I think he's willing to talk about what  
7 process.

8                   And I think his concern is a process that has the  
9 potential to be elongated beyond what is needed to address the  
10 issues in question, and to fashion something so that we had  
11 some expectation of a reasonable end in sight. And I think  
12 those are things that he is willing to talk about, in  
13 discussions I've had with him, and fashioning something that  
14 would achieve those ends.

15                  SENATOR PETRIS: You don't have one clearly in mind  
16 right now?

17                  MR. GOULD: Well, I really don't. You know, I  
18 think the fact that he indicated to me that he was willing to  
19 talk about a process, work with the Legislature on one that  
20 would provide for a full information -- with the ability to  
21 have a give and take among the experts; they can isolate all  
22 the information, resolve the outstanding issues -- he thinks is  
23 appropriate.

24                  So, I think those kinds of elements which get us to  
25 the point where we have that kind of exchange -- some of the  
26 comments I heard is that people didn't really have a chance to  
27 talk to each other, and to inquire about how people came to the  
28





1 conclusions that they came to.

2 I believe it's appropriate to have that kind of  
3 dialogue.

4 I'm not an attorney nor a judge, so I'm not sure I  
5 can give you all the answers in terms of the specifics. But  
6 clearly, the Governor and I have an interest in opening up the  
7 process to provide that kind of exchange.

8 And I think there should be a record, and there  
9 should be a finding.

10 SENATOR PETRIS: Suppose we have an agreement, and  
11 there is a hearing, or some abbreviated procedure. And some  
12 people who are not even here examine the results on either  
13 side. They don't like the results. They can challenge the  
14 entire process because we haven't stuck 100 percent to what  
15 they believe is the only proper process, and that is the  
16 adjudication. Then you've got another big-time delay.

17 It seems to me, everywhere you turn, you face the  
18 prospect of a delay.

19 I don't like to have it called abuse. We've been  
20 waiting three weeks for an answer on what kind of hearing, and  
21 we haven't had one, for good reasons, but I could call that  
22 abuse. It's not fair to accuse people who use a process that's  
23 been in place by statute for a long time, and is there for that  
24 purpose, you know, to go through the procedure. It's not fair  
25 to say you're going to abuse the system.

26 A lot of people have told me that about Proposition  
27 103, which I supported, on the insurance thing. They're very  
28



1 upset because insurance companies are now jumping into court,  
2 and there's going to be a lot of delay in determining that.  
3 They claim that's abuse.  
4

5 I have to give them a lecture on Civics I, wait a  
6 minute. I think they're perfectly proper in taking advantage  
7 of whatever remedies are provided by law, and if it drags out  
8 for five years, and goes all the way to the U.S. Supreme Court,  
9 they have that right.

10 I don't think you should call that abuse. That's  
11 what I've been telling people who are on my side of that issue.

12 And I feel the same way about this one.

13 So, what you're suggesting is to go ahead, open the  
14 dialogue, try to arrive at some arrangement.

15 It sounds very fair and reasonable to me, but what  
16 I'm afraid of is, you're exposed to the same delay problem and  
17 the same legal attack problem. Whatever device we agree upon  
18 between the two branches of government is not binding on  
19 anybody out there. Even if some people in this room agreed to  
20 it, they only represent certain bodies of opinion, or maybe a  
21 formal organization. Beyond that, there are people out there  
22 who are going to say, "I don't like the decision. You agreed  
23 the decision was to reject that site, and I think that site  
24 should have been chosen; therefore, I'm going to challenge the  
25 whole thing."

26 That's the risk you take whichever way you go.

27 MR. GOULD: Senator, I've had my counsel advise me  
28 that if we were to adopt a process without a legal basis for



1 doing so, that that can create some exposure also.

2  
3 SENATOR PETRIS: They're saying --

4 MR. GOULD: Well, it's a little different. They're  
5 saying if we agreed to adopt a Nuclear Regulatory Commission  
6 process without the legal basis to do so, that could -- there  
7 could be challenges based on that because it's not clear,  
8 contrary, I think, to the opinion that you have from your  
9 Counsel that that is the appropriate legal remedy and the legal  
10 route to review a license.

11 That's why I'm suggesting that maybe getting advice  
12 from the Attorney General, which could independently review the  
13 situation and make a judgment call, so as to hopefully avoid  
14 any delay. Because I think we all want a responsive process to  
15 look at the issues come forth.

16 SENATOR PETRIS: What would the form of the  
17 question be? Would you ask him, "Is this the right process?"

18 MR. GOULD: I think we'd ask him what is the right  
19 process.

20 I'd be open to having that issue as an open-ended  
21 question.

22 CHAIRMAN ROBERTI: The Attorney General now is in  
23 litigation, has filed an amicus curiae brief with the Supreme  
24 Court.

25 On what point was that again?

26 MR. GOULD: I believe that's on the state's rights  
27 issue, Senator.

28 SENATOR PETRIS: Title?





1           MR. GOULD: That's right, on take title provisions  
2 that were within the federal law to ascertain whether or not a  
3 state really was under obligation to take title to waste as  
4 provided under federal law. It's a state's rights issue. I  
5 think the Attorney General has presented an amicus curiae to  
6 the New York case before the Supreme Court.

7           SENATOR PETRIS: It wouldn't be the same issue  
8 we're asking here, but it's tangential.

9           CHAIRMAN ROBERTI: Well, thinking out loud, an  
10 Attorney General's opinion, and at the same time, I take it,  
11 your position would be to have, even awaiting that, a hearing  
12 process before an administrative law judge.

13           Am I right?

14           MR. GOULD: Yes, or we could start a process.  
15 Frankly, I think it'd be helpful to start the exchange of  
16 information. You know, we want to open the process up and have  
17 that dialogue.

18           So, I think we can work with you in terms of the  
19 sequence.

20           You know, I think clearly, as part of this, we're  
21 also looking at a moratorium on granting a license to resolve  
22 this question. We're really looking at trying to take a step  
23 back, and to look at the question of what is the appropriate  
24 legal process, to start opening up the dialogue so we can  
25 resolve these issues.

26           SENATOR PETRIS: How long would the moratorium be?

27           MR. GOULD: Well, I think it would be until we  
28



1 completed a process that we agreed upon, and certainly had  
2 ratification from the Attorney General that we were acting  
3 within the law. So, I would see that certainly being a number  
4 of months.

5 SENATOR PETRIS: Who has the authority to impose a  
6 moratorium?

7 MR. GOULD: That would be something that we would  
8 just do within the Administration and commit to.

9 SENATOR PETRIS: You're satisfied that,  
10 administratively, it's permitted?

11 MR. GOULD: Yes. Clearly, we run, you know, into  
12 federal law, and in fact some exposure to the state beginning  
13 in January of 1993, in terms of the potential of where our  
14 waste might go, and whether or not we would be precluded from  
15 going to Nevada or to Washington or South Carolina, the three  
16 operating sites.

17 I think -- I think that becomes an issue, but I  
18 think we could put a moratorium on for a period of months while  
19 we resolve the issue.

20 SENATOR PETRIS: On the title issue, my  
21 understanding is that the local aspect of that has to do mainly  
22 with the liability worry, that the feds don't want it. They'd  
23 be very happy to give us the property. That's why the law says  
24 you've got to take it, as I understand.

25 Our people at the state level have say, no, they  
26 don't want it because of the liability. And that's the issue,  
27 I think, in New York; isn't it? It's the constitutional right  
28





1 of the feds to impose that transfer on the states.

2           Actually, it's not the title they're worried about;  
3 it's the liability that goes with it, and that's a very big  
4 issue. And I guess that would have to be addressed. We can't  
5 ignore that. That's got to be part of our consideration.

6           I don't mean ours in this Committee, but in the  
7 process of resolving the issue there in Ward Valley or any  
8 other place.

9           Well, I'm glad I'm not sitting where you're  
10 sitting. It's tough enough being where I am.

11           CHAIRMAN ROBERTI: So, I take it, you would seek a  
12 moratorium?

13           MR. GOULD: Yes, sir.

14           CHAIRMAN ROBERTI: And begin a hearing process  
15 before an administrative law judge. We would await an opinion  
16 from the Attorney General.

17           I wonder what the process is in the Attorney  
18 General's Office for opinions in this area? I assume he  
19 doesn't write the opinion himself.

20           Can anybody help us on this?

21           SENATOR PETRIS: On the Attorney General?

22           CHAIRMAN ROBERTI: Yes.

23           SENATOR PETRIS: Well, I have another preceding  
24 question.

25           CHAIRMAN ROBERTI: Yes, please.

26           MS. BRANDT: Mr. Chairman, my name is Lisa Brandt.  
27 I'm the Chief Counsel for the Department of Health Services.  
28



1 I spent 16 years in the Attorney General's Office.

2 The Attorney General currently has a dedicated  
3 Opinion Unit, a group of senior lawyers who write opinions.  
4 That is their entire job in the office. And those opinions are  
5 subject first to peer review, and then to supervisory review.

6 On matters such as this, it would be subject to  
7 review by the Attorney General himself, I would assume.

8 CHAIRMAN ROBERTI: But before it gets to the  
9 Attorney General, however, there is a nonpolitical -- we're all  
10 political people, political animals, and we might as well face  
11 that fact of reality -- a nonpolitical process?

12 MS. BRANDT: That's correct.

13 The actual writing of the opinion is done by the  
14 civil service employees in the Opinion Unit.

15 CHAIRMAN ROBERTI: Does that happen before the  
16 Attorney General necessarily sees the opinion?

17 MS. BRANDT: That's correct, and it is, as I said,  
18 it is subjected to peer review.

19 CHAIRMAN ROBERTI: And it's subjected to peer  
20 review before it goes to the Attorney General?

21 MS. BRANDT: That's correct.

22 I'm not going to represent to this Committee that  
23 there is no political involvement at any point in the process,  
24 because it is the opinion of the Attorney General.

25 CHAIRMAN ROBERTI: I understand that, but I'm  
26 trying to acquaint myself with what the process is before it  
27 gets to him.  
28



1 MS. BRANDT: That's correct.

2 SENATOR PETRIS: Well, Mr. Chairman, I feel like  
3 the patient who's been given good news. He's not inclined to  
4 run out and seek a second opinion.

5 When you get bad news, you want a second opinion.

6 Those who want a second opinion feel that the  
7 Legislative Counsel's opinion is bad news. I think it's good  
8 news, and I'm not interested in the Attorney General's opinion,  
9 or anyone else's, for that matter.

10 I wouldn't support getting another opinion.

11 It's kind of a slap at the Legislative Counsel.  
12 It's our counsel. We asked him a question. And in other kinds  
13 of proceedings here, I've stuck with Counsel, even when I  
14 didn't agree with the opinion as a lawyer.

15 MS. BRANDT: Senator, if I may respond to that.

16 It is inevitable that by the point where the  
17 Legislative Counsel issued an opinion on the subject, there was  
18 already a legal opinion which had been provided to Mr. Gould  
19 and the Governor's Office.

20 SENATOR PETRIS: By the A.G.?

21 MS. BRANDT: No, by -- by my office.

22 SENATOR PETRIS: Internal, yes.

23 MS. BRANDT: I have spent 18 years practicing  
24 administrative law. I have done considerable writing and  
25 lecturing in the area of administrative law.

26 And I think that I can address correctly whether an  
27 APA-type hearing is required under this section.  
28





1           The Legislative Counsel's opinion starts out by  
2 reaching for legislative intent by comparing state  
3 administrative law to the federal administrative process. And  
4 going back to 1926, the opinions of the California Supreme  
5 Court have been that California administrative procedure  
6 follows the State Constitution, and does not in any way follow  
7 federal administrative law.

8           So, there is a very fundamental flaw in the  
9 Legislative Counsel's opinion.

10          SENATOR PETRIS: Even where there's federal  
11 involvement and participation in the policy decisions, such as  
12 stuffing a piece of property down our throat that we may not  
13 want?

14          MS. BRANDT: The federal --

15          SENATOR PETRIS: Doesn't that automatically kick in  
16 certain federal statutes?

17          MS. BRANDT: The federal law, Senator, was enacted  
18 -- written by and enacted at -- upon the lobbying of the  
19 National Governors' Association, so it was not entire a federal  
20 idea. It was the states who wanted this law.

21          SENATOR PETRIS: Yes, but we're talking about a  
22 federal statute --

23          MS. BRANDT: That's correct.

24          SENATOR PETRIS: -- regardless of who asked for it.

25          MS. BRANDT: It is a federal statute which the  
26 states asked for. And under that statute, the states made  
27 certain agreements that they would be responsible for the waste  
28



1 generated within their own borders.

2           The federal government has never had responsibility  
3 for this waste. The shift in responsibility that happens  
4 January 1 of 1996 is a shift from the responsibility on the  
5 part of the generators located within California to the state.

6           SENATOR PETRIS: To the state.

7           MS. BRANDT: It's not from the federal government  
8 to the state.

9           SENATOR PETRIS: Are you saying the federal  
10 government has no liability whatsoever, even if it's federal  
11 property, and they condone the use of it for that purpose?

12           MS. BRANDT: I can't make that broad a statement,  
13 Senator, because there -- if there's federal property, there  
14 may be federal liability.

15           But we're not talking about waste that is generated  
16 on federal property and that is created by the federal  
17 government. We're talking about waste that is, for example,  
18 generated by the University of California, by the state itself.  
19 It's not waste that the federal government is giving us. It's  
20 waste that we're generating within California.

21           SENATOR PETRIS: I was referring to the ownership  
22 of the property.

23           MS. BRANDT: Right now, the federal government owns  
24 the property --

25           SENATOR PETRIS: Ward Valley right now is owned --

26           MS. BRANDT: The State of California is attempting  
27 to acquire the property for the purpose of using is for this  
28



1 site.

2  
3 SENATOR PETRIS: But at first go-around, the State  
4 Lands Commission said no, but that's only preliminary, I  
5 understand.

6 MS. BRANDT: The State Lands Commission has not, to  
7 my knowledge, officially said no. They have indicated through  
8 staff that --

9 SENATOR PETRIS: Yes, that's why I said  
10 preliminary.

11 MS. BRANDT: -- there's a certain lack of interest  
12 at the moment.

13 SENATOR PETRIS: Well, it seems to me -- I not here  
14 to argue -- I'd like to have a copy, if you'd reduce that to  
15 writing.

16 MS. BRANDT: I have not reduced my advice to  
17 writing, Senator. And one very good reason for that --

18 SENATOR PETRIS: That's all right. I'm not asking  
19 you to do it, but if you had one, I'd like it prepared.

20 MS. BRANDT: We -- I know everyone has said it is  
21 likely that this will end up in litigation. I think it is  
22 inevitable that this will end up in litigation. There is so  
23 much emotion attached to this issue, that even if the state  
24 does everything absolutely correctly --

25 SENATOR PETRIS: It'll be challenged.

26 MS. BRANDT: -- there will be litigation.

27 SENATOR PETRIS: I agree. I said that earlier.

28 MS. BRANDT: I'm very hesitant to put legal advice





1 in writing simply because in state government, even legal  
2 advice occasionally makes it into the public record if it's in  
3 writing. So, I have given my legal advice verbally to  
4 Mr. Gould, Secretary Gould.

5 SENATOR PETRIS: Okay.

6 Let me just ask you again about the effect of the  
7 property remaining in public ownership -- excuse me, federal  
8 ownership.

9 Doesn't that automatically bring into the picture  
10 whatever pertinent federal statutes there are regarding that  
11 subject?

12 MS. BRANDT: No, Senator, it would not.

13 The property would not remain in federal ownership  
14 and be used as a low level waste site at the same time.

15 It's been made quite clear by the Bureau of Land  
16 Management that if we want to use it for the site, we need to  
17 own it before we use it for that.

18 SENATOR PETRIS: Why is that?

19 MS. BRANDT: So, that would not be an issue.

20 SENATOR PETRIS: Why is that?

21 MS. BRANDT: Because it's our site, not their site.

22 SENATOR PETRIS: Not now, it isn't.

23 MS. BRANDT: Well, the proposed site would be the  
24 site of the Southwestern Compact, for which California is the  
25 host state for the first 30 years. Thereafter, it cycles  
26 through the other states in the Compact.

27 SENATOR PETRIS: Well, I've been told the reason  
28



1 they're anxious about that is to make sure that no liability  
2 attaches to them. They don't want their fingerprints on it,  
3 and they don't want any chain of title that shows that they  
4 have a present interest in it at the time that it's converted  
5 to that use.

6 MS. BRANDT: I have no reason to believe that,  
7 Senator, because all of the -- all of the compacts have had to  
8 develop sites, and in all cases, the site is land that is owned  
9 by the state, not land that's owned by the federal government.

10 SENATOR PETRIS: I understood the statute provides  
11 that the site must be owned by either the state or the federal.  
12 It doesn't say --

13 MS. BRANDT: The statute doesn't provide for that.

14 SENATOR PETRIS: It doesn't say it must be owned by  
15 the state.

16 MS. BRANDT: No, that's correct.

17 SENATOR PETRIS: It could be owned by the feds.

18 MS. BRANDT: But the federal government is free to  
19 take a position that the state must own it.

20 SENATOR PETRIS: Yes, they're reluctant. Well, I  
21 want to know why.

22 The feds usually hang on to the property as long as  
23 they can, you know. We've got umpteen million acres in  
24 California that are still owned by the feds, and there have  
25 been a lot of business groups trying to pry that loose for  
26 decades. They're not letting go.

27 But they're very eager to let this go, and that  
28



1 raises questions as to why, other than some administrative  
2 convenience.

3 But if that's not within your scope, it's okay.

4 MS. BRANDT: It's been fairly clear that the  
5 development of low level radioactive waste sites in all of the  
6 compacts has been a federal priority.

7 So, I would assume the reason that the Bureau of  
8 Land Management has been cooperative with the State of  
9 California over acquisition of this site is that they do view  
10 this as a federal priority to assist California in developing a  
11 site.

12 SENATOR PETRIS: But not when they're the  
13 landlords.

14 MS. BRANDT: Again, this is a state responsibility  
15 according to the federal law.

16 SENATOR PETRIS: Well, if the feds kept the  
17 property and said, "Go ahead and use it. We'll sign an  
18 agreement permitting you to use it for this purpose," do they  
19 have any continuing activity that they're compelled to engage  
20 in?

21 MS. BRANDT: Senator, I would have to speculate  
22 about exactly what the nature of the agreement would be, and it  
23 could be almost anything.

24 SENATOR PETRIS: Okay.

25 Thank you.

26 MS. BRANDT: Mr. Chairman, if you have any other  
27 questions for me, I'd be happy to answer them. Otherwise I'll  
28





1 let --

2 SENATOR MELLO: Mr. Chairman, I'd like to.

3 CHAIRMAN ROBERTI: Senator Mello.

4 SENATOR MELLO: There's been some statements made  
5 here about the Legislative Counsel and their opinion, just  
6 tossing it off as another person's opinion.

7 And I have the highest regard for Bion Gregory and  
8 his complete staff there.

9 You mentioned that one flaw here -- I went back and  
10 I counted. This is more than just an opinion. They have --  
11 they're quoting cases, case law: one, two, three, four, five,  
12 six, seven, eight, nine, ten eleven. Eleven cases that are  
13 there to back up their opinion.

14 And I think, from my perspective, they have been  
15 nonpolitical in any case, shape or form.

16 Now, who is political, if you want to talk about  
17 it, is Dan Lungren. Witness the action taken recently against  
18 Bill Honig and Bill Bennett, two persons that had Grand Jury  
19 charges brought against them, but the Governor, right at this  
20 moment, is already planning, as said in the newspaper this last  
21 week, to decide who the appointment's going to be to replace  
22 Mr. Honig and Mr. Bennett.

23 If that's not political, I don't know what is.

24 And Mr. Gregory has had far more years of  
25 experience in leading that fine staff in the Legislative  
26 Counsel's Office than Mr. Lungren has. He was a  
27 Congress person, and came here and was elected District  
28



1 Attorney [sic] in 1990.

2 But I would certainly hate to see this issue move  
3 into the Attorney General's hands, number one.

4 And number two, what I hear Mr. Gould talking about  
5 is, we have to open up the dialogue. Well, you know, dialogue,  
6 as I understand it, means you have to sit down and talk with  
7 people. But once tomorrow is over, if he's confirmed, the  
8 dialogue will lessen, and the process will lessen to the point  
9 where I think all the people that are now opposing this matter,  
10 wanting a more stringent hearing in the adjudicatory process,  
11 are going to be left out. Well, they might be not left out of  
12 the dialogue, but they're going to be left out in the decision.

13 MR. GOULD: Senator, I want to be very clear.

14 My commitment to you and to the rest of this  
15 Committee is not for one day. It is a commitment to do a  
16 process where we have a full exchange of information. And  
17 that's my commitment.

18 It is not something that dies in one day.

19 SENATOR MELLO: Let me ask you something. I've  
20 been a business person. I'm not a lawyer.

21 What does the word "process" mean? And what does  
22 the word "open up the dialogue"? To me, it doesn't mean much.  
23 You can just sit down and talk and fully comply with that.

24 I think you would -- I respect your integrity, and  
25 so forth, but the chips are heavy here. I mean, we're dealing  
26 with the low level nuclear waste. And I don't think anything  
27 short of a full adjudicatory hearing -- and I do support Ward  
28



1 Valley. I do support -- we need a disposal site here in  
2 California, but the way that site is going to be selected, and  
3 the way the process is going to be working so that material can  
4 be disposed of safely has to go through the most stringent  
5 terms, as far as I'm concerned.

6 So, I hear, "Let's bring Dan Lungren into it,"  
7 you're not even willing to share your opinion with us. We've  
8 shared our opinion with you fully. And the cases cited here by  
9 her are fully listed here to back up her statement.

10 What she said, she has an in-house opinion that  
11 she'll rewrite, or so forth. Why don't you lay all the cards  
12 on the table? Is that dialogue? I mean, is that what the  
13 people out here can expect in this dialect [sic] process that's  
14 going to take place?

15 MR. GOULD: Senator, I think I've described to you  
16 that we are willing to have an adjudicatory process as long as  
17 that process --

18 SENATOR MELLO: A process or hearing?

19 MR. GOULD: I don't know what the proper term is,  
20 if you want to call it hearing, but I think there's a question  
21 about how we structure that process. And I think that's the  
22 issue we need to talk about, and we're willing to work with you  
23 on.

24 And I think that there are differences in terms of  
25 how you structure that, that can keep the process focused, keep  
26 it on track, and still result in a full exchange of  
27 information, and so that we get to the bottom of and have an  
28





1 opportunity for everyone to satisfy the issues that are  
2 outstanding.

3           SENATOR MELLO: Well, from what I learned about  
4 adjudicatory process just a few weeks ago, it's a formalized  
5 hearing that requires a full disclosure of information in each  
6 other's files, and the hearing can -- you can have cross  
7 examination of the witnesses. And the finding made by the  
8 hearing officer and the judge has to be made on the evidence  
9 that's presented.

10           Now, that is what I'm looking for. That's a formal  
11 type hearing as now set forth by the Nuclear Regulatory  
12 Commission.

13           MS. BRANDT: Senator Mello, there is no such thing  
14 an adjudicatory hearing as a concept. There are various types  
15 of hearings that have been defined as adjudicatory. There is a  
16 type of hearing that's held under Part 10 of the Code of  
17 Federal Regulations by the Nuclear Regulatory Commission.

18           There is an entirely different kind of hearing that  
19 is also referred to as an adjudicatory hearing that is held  
20 under the California Administrative Procedure Act. Those  
21 hearings do not look the slightest bit alike, and they are  
22 entirely different in their procedure.

23           There are other hearings that are also referred to  
24 as adjudicatory that are entirely different in procedure.

25           So, there is no such thing as an adjudicatory  
26 hearing, and you know it when you see it.

27           The thing that is adjudicatory is the decision that  
28



1 comes out at the end of the hearing, basically.

2           SENATOR MELLO: What I'm looking for is an  
3 adjudicatory hearing that includes: the disclosure of  
4 information in the files; the includes the cross examination of  
5 witnesses; and that the decision be made on the evidence.

6           MS. BRANDT: The problem with having that type of a  
7 hearing and allowing every person who wants to participate to  
8 participate is simply insurmountable, because there is not  
9 anywhere in the entire country an administrative procedure that  
10 provides for that. That is simply a type of hearing that no  
11 one has ever had.

12           SENATOR MELLO: Can't you limit it to --

13           MS. BRANDT: The Nuclear Regulatory Commission --

14           SENATOR MELLO: Can't you limit that to ten persons  
15 from each side, or twenty?

16           MS. BRANDT: The Nuclear Regulatory Commission  
17 normally limits participation to somewhere in the neighborhood  
18 of two to four parties, and that's for a nuclear power plant  
19 construction.

20           SENATOR MELLO: What's wrong with doing that?

21           MS. BRANDT: Under the opinion that was issued by  
22 the Legislative Counsel, that would not be permitted because  
23 the Legislative Counsel has interpreted a statute that says  
24 every person who wants to participate must be allowed to  
25 participate, to require that they be allowed to participate in  
26 a type of hearing where everyone can get separate discovery,  
27 everyone can have separate counsel, everyone can have separate  
28



1 pleadings filed, everyone can have separate cross examination.  
2 That is simply a totally unmanageable style of hearing.

3 SENATOR MELLO: So, you're saying we should not go  
4 to that because of insurmountable number of people to be there  
5 testifying?

6 MS. BRANDT: What I'm saying, Senator, is that  
7 that's some additional evidence that the Legislature could not  
8 possibly have meant that that is the kind of hearing that was  
9 to be held.

10 SENATOR MELLO: I think as you go in, both sides  
11 could agree to setting forth the number of persons testifying  
12 on both sides, and that's it. And if they were adequate  
13 enough, I think there might be one or two people that has  
14 enough information there to be able to make the proper  
15 testimony.

16 But I don't say limit it to that. Make it so that  
17 people can testify.

18 What are we afraid of? That's what I'd like to ask  
19 you. Are we afraid of what's in our files, and our witnesses  
20 subject to cross examination or disclosure?

21 MS. BRANDT: Senator, the files have been made  
22 available. They have --

23 SENATOR MELLO: Yes or no.

24 MS. BRANDT: I'm not afraid of anything. The files  
25 have been made available. The information has been made  
26 available.

27 The problem with making witnesses subject to cross  
28





1 examination on some of these technical issues is that that is  
2 an extremely difficult thing to do. The -- normally, technical  
3 issues are not resolved by having lay witnesses testify subject  
4 to cross examination by lay people in an administrative hearing  
5 context.

6           The way that these technical issues have been  
7 resolved is to have contractors prepare technical treatises.  
8 They have all been part of the public record. There have been  
9 extensive hearings, and the way in which the information has  
10 been handled is that the people who had concerns were allowed  
11 to express those concerns without any limitation, and the  
12 Department has responded in writing to those concerns and will  
13 continue to respond in writing to those concerns.

14           SENATOR MELLO: They had a hearing in San Luis  
15 Obispo before the Diablo Canyon nuclear plant opened up. They  
16 brought a hearing officer out, and they heard from everybody  
17 there at the hearing. It lasted two or three days, and it gave  
18 everybody a chance to testify.

19           And after they found -- after they licensed the  
20 plant, PG&E had to go back and hire Bechtel at a cost of \$2.2  
21 billion to bring up the safety factors in that plant that  
22 already had been proved by the NRC.

23           But finally it was delayed another two years. The  
24 cost ended up \$7 billion, but it operated, started up. Now  
25 it's operating with a high degree of safety, I think, even  
26 though it's had a few minor leaks.

27           But if they'd have let that plant open up before  
28



1 they'd gone back in and rehabilitated the plant, there could  
2 have been a major Chernobyl down there in San Luis Obispo.

3 But that's what the process does, I think. It  
4 shows the faults with what's being planned.

5 And I'm just very sorry that the State of  
6 California and you Department is unwilling to really meet a  
7 tough test for disposal of nuclear waste that the evidence  
8 there is -- shows the half-lives and the years this can be  
9 there, generating radiation damaging to the public health and  
10 safety of our people, can go on for so long.

11 We said last week, look at the dumping out in the  
12 Farallon Islands. What kind of hearing did that have? I guess  
13 it had a hearing, but there's 50,000 drums sitting out there  
14 containing nuclear waste, and I think we regret very much --  
15 the people who were part of that decision regret very much that  
16 someday that decision will come back to haunt us.

17 I just don't want to see some more Farallon  
18 Islands, I mean, the disposal of waste out in the ocean, or  
19 anywhere, where it's going to come back and haunt us.

20 So, that's why I think we really have to open up  
21 our files here, and open up our cards, and make sure when this  
22 plant -- when this Ward Valley disposal site is opened, it's  
23 going to be a safe operation.

24 MR. GOULD: Senator, think the Governor has  
25 committed with Senator Roberti in his discussions that he is  
26 willing to go through an extensive process. And if that means  
27 an adjudicatory hearing in order to effect that, that's fine,  
28



1 as long as we have safeguards in terms of the mechanics and the  
2 process so that is it not a potential process that can be  
3 exaggerated beyond getting the meaningful data necessary to  
4 make a decision.

5           SENATOR MELLO: Well, I hate to say this, but  
6 think, you know, you're going to end up in court following it  
7 that way, and it's going to be a long haul, and a very costly  
8 one, and a lot of delays.

9           And it could be resolved very simply if you'd just  
10 sit down and work out -- just commit to a system that's going  
11 to satisfy the requirements of this permit.

12           But if the Governor -- you know, he's a powerful  
13 person, but whatever he commits to, it's going to fall short of  
14 what I think I'm asking for, and what Senator Petris is asking  
15 for, and what many of our witnesses here are asking for.

16           Thank you again, Mr. Chairman.

17           CHAIRMAN ROBERTI: Any other comment from Senators?

18           I would suggest that we stand in recess. I know we  
19 have a lot of witnesses, but we heard a lot of witnesses during  
20 the last hearing. And the purpose of this hearing wasn't  
21 really to take witnesses.

22           That's true, we did not take witnesses from the  
23 proponents of the site.

24           Who is here to testify in favor of the Ward Valley  
25 site? Well, I guess we have to be fair about this.

26           I have in front of me: Eric Lapalla, Senior Vice  
27 president of Harding Lawson Associates; Carolyn Owen, Health  
28





1 Physics, Northern California Health Physics Society; William  
2 Larson, a Radiation Safety Manager at TRW; William Otterson,  
3 Board Member and Co-Founder of National Association of Cancer  
4 Patients; Dr. Alan Pasternak, Technical Director of CAL RAD  
5 Forum.

6 Are they all here? There are four of them, okay.

7 Donna Earley, Director of Radiation and  
8 Environmental Safety, Cedars Sinai Medical Center; Kenneth  
9 Widder, CEO, Molecular Biosystems; Bob Lull, Doctor, Chief of  
10 Nuclear Medicine, San Francisco Hospital; Ron Gaynor, Senior  
11 Vice President, U.S. Ecology; Steven Romano, Vice President and  
12 Manager of California Operations; Ed Cook, Vice President of  
13 Operations, Gen-Probe; Larry Respass, Vice President, General  
14 Counsel of Ligand Pharmaceuticals; and Lynn Wallis, Manager of  
15 Media and Environmental Info Programs and Consultant in Health  
16 Physics and Nuclear Safety for General Electric.

17 Are they all here?

18 Is there anybody that I didn't mention?

19 If you can try to keep it relatively brief, I'd  
20 appreciate that.

21 Mr. Eric Lapalla, Senior Vice President of Harding  
22 Lawson Associates.

23 MS. OWEN: Senator Roberti, we had an order to  
24 present the people to you. Is that okay, or would you like --

25 CHAIRMAN ROBERTI: That's fine.

26 MR. LAPALLA: If we could do that, I was going to  
27 go somewhat later in the program.  
28



1 CHAIRMAN ROBERTI: That's fine with me, yes.

2 MS. OWEN: Thank you.

3 My name is Carolyn Owen, and I'm a certified Health  
4 Physicist. I currently work as the Director of Environmental  
5 Health and Safety for a major biotechnology firm in the Bay  
6 Area by the name of Kyron.

7 I've also been the Radiation Safety Officer for  
8 U.C. Davis for the last ten years.

9 I'm here as the President of the Northern  
10 California Chapter of the Health Physics Society. I represent  
11 about 300 members that are health physicists. That is the  
12 profession of overseeing the safe use of radiation. That is  
13 what we do.

14 We are here to tell you as a consensus that my  
15 group has reached that we want to endorse the Ward Valley site;  
16 that we feel strongly that the design of the site has been  
17 thoroughly looked at by professionals, and that it is a safe  
18 design.

19 We feel that this is California's best option. We  
20 feel that it's critical that you know that the research that  
21 goes in with use of radiation, both medical and from many  
22 applications in the research setting, will be halted if this  
23 site is not licensed.

24 And we have tremendous concern. When I hear you up  
25 here talking of moratoriums, and of stopping this process, I  
26 become tremendously worried.

27 My company does infectious disease research,  
28



1 primarily AIDS research. We work on vaccines. We work on  
2 therapeutics for cancer.

3           You will halt our research if you go forward with  
4 halting the licensing of this site. I have tremendous concerns  
5 about that.

6           It think it's critical work. And if we can't do it  
7 in California, we will have no choice but to leave California.

8           CHAIRMAN ROBERTI: Explain to me how we would halt  
9 the research.

10           MS. OWEN: Be happy to.

11           Last year, to give you an idea of the volume of  
12 radioactive waste we generated, we generated about 16 tons.  
13 I've heard that you were given testimony that this material  
14 could fit in a shoe box. Let me tell you, last year it fit in  
15 90 55-gallon drums.

16           It is not material that is small in quantity. It  
17 is not just short half-life material. It occupies a tremendous  
18 volume to us, 16 tons.

19           It also is a variety of half-lives. If we were to  
20 start a decay program of site storage today, the minimum short  
21 half-life isotope that we have would have to be held on site  
22 for five months. Most of the isotopes would have to be held up to  
23 three years. That's just the short half-life isotopes.

24           My company does not have the capability to store,  
25 nor do I feel that it is safe to store, those quantities of  
26 waste in the Bay Area, in high population regions, for up to  
27 three years of time.  
28





1           The long-lived isotopes we also work with, we  
2 cannot rely on decay. They are not going to decay in our  
3 lifetime. Those materials will simply be stored indefinitely.  
4

5           This is not a safe situation, and this situation  
6 has to be resolved. And it is our professional opinion,  
7 meaning the Health Physics Society, which is a large national  
8 organization that is involved with this issue on a daily basis,  
9 that this site is the safest solution.

10          And I encourage you to divorce the issue of  
11 Mr. Gould's confirmation, and to confirm him based on his own  
12 merits, not on this issue. And to move forward without delay  
13 so that our research, which I consider critical to the health  
14 and welfare of the people in this state, will continue.

15          Thank you.

16          CHAIRMAN ROBERTI: Thank you very much.

17          Next.

18          MS. EARLEY: Senator, my name is Donna Earley.  
19 I'm the Director of Radiation and Environmental Safety at  
20 Cedars Sinai.

21          I'm here representing not only Cedars Sinai, but  
22 the Southern California Health Physics Society.

23          And it's also our consensus that we need to move  
24 forward with this process. An adjudicatory hearing will delay  
25 the opening of this site far beyond our storage capabilities.

26          At Cedars Sinai Medical Center last year, we did  
27 thousands of nuclear medicine procedures. We processed over  
28 one million clinical laboratory samples. Our volume of waste



1 and our storage facilities, we also are located in the city.  
2 We're in the city -- near the city of Beverly Hills. We cannot  
3 expand. I cannot built another facility to store this  
4 material.

5 Our research will halt. We are already putting our  
6 researchers on notice as of January of this [sic] year, we will  
7 stop our research. We have no choice.

8 This is AIDS research. This is diabetes,  
9 Alzheimers, genetic research for children.

10 Unlike the biotech firms, we can't move. We're  
11 going to have to stop our research to make room for decay of  
12 our short-lived material. By April of '93, that will be full.  
13 We will have to start choosing which patients will get nuclear  
14 medicine procedures, which ones will get therapeutic  
15 procedures, and which don't. Not a position that I want to be  
16 in, not a position that you would like to be in.

17 Again, we would like to follow the previous  
18 testimony and urge you to take this issue out of this hearing.  
19 This isn't the place for it.

20 SENATOR PETRIS: Question, Mr. Chairman.

21 CHAIRMAN ROBERTI: Senator Petris.

22 SENATOR PETRIS: The first witness.

23 MS. OWEN: Yes.

24 SENATOR PETRIS: You know the site down there at  
25 Ward Valley?

26 MS. OWEN: Yes, I do.

27 SENATOR PETRIS: How long has it been under  
28



1 consideration?

2 MS. OWEN: I'm not the best person to ask that.  
3 It's been quite a number of years. I want to say eight.

4 SENATOR PETRIS: All right. Eight years ago, if  
5 you'd been invited to give the statement you just gave to a  
6 court --

7 MS. OWEN: Uh-huh.

8 SENATOR PETRIS: -- would you have done it?

9 MS. OWEN: Absolutely. Eight years ago I was  
10 involved in this issue.

11 SENATOR PETRIS: My problem is, how come it wasn't  
12 done eight years ago and avoid all of this today?

13 MS. OWEN: The said topic is that radiation is a  
14 controversial topic, and I can -- know many chemicals that are  
15 much more hazardous than radiation, but you raise that word and  
16 it's a red flag. And it has been like that for a number of  
17 years. It's unfortunate.

18 SENATOR PETRIS: I know, but you're willing to make  
19 a statement where you can be questioned about it.

20 MS. OWEN: Yes.

21 SENATOR PETRIS: And different statements made by  
22 others are also exposed to the bright ray of light, and that's  
23 how we arrive at these things.

24 How about you? Would you have been willing to make  
25 the same statement --

26 MS. EARLEY: Senator, I have made these statements  
27 before other -- other committees of this Senate. I have made  
28





1 these statements at many public hearings.

2 SENATOR PETRIS: So that's not a problem with you.

3 MS. EARLEY: There have been -- you know, listening  
4 today, it sounds like no one's ever had an opportunity for  
5 hearing. There have been many, many, many public hearings.  
6 this has not been a secret process. It has been discussed --  
7

8 SENATOR PETRIS: We're not talking about planning  
9 commission hearings, where you go in there and speak for five  
10 minutes.

11 MS. EARLEY: The League of Women Voters has put on  
12 hearings. There was hearings held in all of the --

13 SENATOR PETRIS: Those are planning commission-type  
14 hearings, town hall meetings, and they're wonderful, and they  
15 have their place.

16 But there are others who disagree with your  
17 testimony, and some of them are experts in the field as well.  
18 And they have very knowledgeable counsel who can flush out the  
19 differences and conduct a very meaningful cross examination.

20 I don't think you'd object to that. You obviously  
21 have tremendous confidence in your position.

22 So I guess what I'm asking is, again, this all  
23 happened before the current nominee came on the picture, I  
24 don't know why in the world it wasn't done back then to avoid  
25 this kind of problem later on? It should have been done a long  
26 time ago. It certainly would have been over by now. It would  
27 have been over quite a long time ago. It's just very sad.

28 The stakes are so high. If we're going to make



1 mistakes, it ought to be on the side of over-caution --

2 MS. OWEN: Absolutely.

3 SENATOR PETRIS: -- rather than helter-skelter.

4 MS. EARLEY: But the result will be many storage  
5 sites around this state. That will be the result.

6 If you're concerned about safety, then you should  
7 really start being concerned. We're talking about people who  
8 will be inappropriately storing; people who won't have the  
9 health physicists on staff to determine what's safe.

10 SENATOR PETRIS: Where is your storage? Is it  
11 right there at the hospital?

12 MS. EARLEY: It's right on the hospital grounds.

13 SENATOR PETRIS: And yours is --

14 MS. OWEN: The same, right in Emeryville.

15 SENATOR PETRIS: I've been there. I've been  
16 through that. I didn't know you stored that stuff there.

17 MS. OWEN: Absolutely. It's part of our daily  
18 lives.

19 SENATOR PETRIS: May I be excused, Mr. Chairman?

20 [Laughter.]

21 SENATOR PETRIS: I need to go get an examination.

22 [Laughter.]

23 CHAIRMAN ROBERTI: What do you do? Increase the  
24 size of the room?

25 MS. OWEN: We will expand and use our warehouses  
26 'til they're full, and then we will have no choice but to move  
27 out. And that will be our plan.  
28



1 MS. EARLEY: Many of our -- our samples are  
2 biological samples. We're talking about blood tissue,  
3 cultures. You can't store them forever on site, you know.  
4 This -- we have to worry about smell, you know. It's not like  
5 it's all paper and gloves that we can just put in a barrel and  
6 leave sit for five years. We don't have that space.

7 MS. OWEN: I'm only concerned, Senator Mello, when  
8 you speak about safety, that you really address the issue of  
9 the fact if we do store bulk quantities of radioactive wastes  
10 throughout this state, that that presents a far greater safety  
11 hazard at this point, and we're really concerned about that.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Question of Mr. Gould. What is the objection to  
14 cross examination of witnesses during the hearing, which would  
15 be an expansion on what I think the Governor has proposed?

16 MR. GOULD: Well, I wasn't privy to that  
17 discussion, but, you know, in the discussions we have had, I  
18 think he was very clear that a good exchange and a give and  
19 take, where you do get a chance to question and to find out and  
20 resolve those issues, was appropriate.

21 So, I'm not aware of any specific reservation. I  
22 think we can work that issue out as we try to design a process  
23 that we could mutually agree to.

24 CHAIRMAN ROBERTI: Maybe after we hear the  
25 witnesses, that should an aspect of any hearing, if we agree to  
26 a hearing.

27 Next witness.  
28





1 DR. LULL: Senator, thank you for allowing me to  
2 present my views and the views of the California Medical  
3 Association, which I'm representing here, which represents  
4 organized medicine in California.

5 I'm Robert Lull. I'm a physician actively  
6 practicing nuclear medicine as Director of the Department of  
7 Nuclear Medicine at San Francisco General Hospital. I'm a  
8 Clinical Professor of Laboratory Medicine and Radiology at the  
9 University of California, San Francisco. I'm certified by both  
10 the American Board of Internal Medicine and the American Board  
11 of Nuclear Medicine, and I am a fellow of both of their  
12 colleges.

13 This year I'm also President of the National  
14 American College of Nuclear Physicians.

15 My testimony here supports the immediate  
16 confirmation of Mr. Gould and also of Dr. Coye without the need  
17 for any adjudicatory hearings on the Ward Valley low level  
18 radioactive waste site. The reason for that is because it is  
19 our opinion that all questions which have been raised by the  
20 opponents of the site have already been adequately addressed,  
21 answered, and documented in prior hearings and public meetings  
22 over the past decade.

23 The California Medical Association is on record in  
24 support of immediate licensure and development of the Ward  
25 Valley low level radioactive waste site because, after our very  
26 thorough investigation, it has been shown to be the safest way  
27 to deal with radioactive waste that occurs from the necessary  
28



1 use of isotopes in medicine and bio-medical research.

2 I'd like at this point to comment on three specific  
3 areas when it's come to my attention that false claims about  
4 the medical need for radioactive isotopes have been made by  
5 opponents to the Ward Valley radioactive waste site. The three  
6 claims that have been made are: number one, non-isotopic  
7 methods can be used as alternatives to radioisotopes in  
8 bio-medical and molecular biology research. This is false.

9 Number two: that nuclear medicine and radiation  
10 therapy only generates small quantities of short-lived isotopes  
11 that can be stored for decay on site. This is false.

12 And number three: that patient care will not  
13 suffer if the Ward Valley site is delayed by adjudicatory  
14 hearings which would last for one or more years. This is  
15 false.

16 Let me talk about these. Now, you've heard this  
17 evidence from people who have reputable scientific backgrounds,  
18 but these are individuals who seem to be dedicated and driven  
19 by a very strong desire to eliminate nuclear power plants from  
20 the state. This desire is sometimes so strong that it seems to  
21 have allowed them to lose scientific objectivity in some of  
22 their claims.

23 However, I think you should be aware that the truth  
24 is readily available and can be shown objectively about these  
25 three claims. Let's look at some of the objective data.

26 The first is that radioisotopes are needed for  
27 molecular biology and bio-medical research. Last week, when I  
28



1 heard about these hearings, I pulled out my latest journal of  
2 the research work entitled, "BLOOD". This is a journal  
3 produced by the American Society of Hematology. They do much  
4 work and research in bio-medicine and particularly molecular  
5 biology.

6 I have available copies of this for you. What I  
7 did is, I highlighted and I wrote in the margins the research  
8 reports that required isotopes. You can see the highlighting:  
9 73 percent of all the reports in this journal, which was  
10 published just last month, required isotopes. Now, they did  
11 use nonisotopic techniques. The fact is that in spite of the  
12 presence of non-isotopic techniques, there is still an absolute  
13 need to use radioactive isotopes.

14 The next point that I would like to make is, this  
15 came from a conversation I had just this morning before I left  
16 San Francisco General Hospital to come to this hearing. I  
17 called Dr. Warner Greene, who is the Director -- he's the  
18 Director of New AIDS Research Center that just opened on the  
19 14th of February on the campus of San Francisco General  
20 Hospital.

21 I'll show you this here, and I have copies of this  
22 available for all of you, too. This is the open house  
23 announcement, and I've quoted his quotes to me this morning,  
24 and he'd be very happy to talk to you if any of you wish to  
25 contact him, or if you generate a letter, to state these  
26 things. And what he quoted me is:

27 "The inability to use radioisotopes  
28





1 because there is no disposal for  
2 low-level radioactive waste in  
3 California would stop our research  
4 dead in its tracks."

5 The next quote he said is:

6 "In many cases, we must use a radio-  
7 isotope test; the non-isotope  
8 techniques are just not as  
9 sensitive."

10 This is from the most expert person we have on AIDS research in  
11 the State of California, the new Director of our AIDS Center,  
12 funded by the state and the Gladstone Foundation.

13 Now, please distribute those and the "BLOOD"  
14 comments I have with my own analysis of that for each of the  
15 Members. Please hand those out to them also.

16 Nuclear medicine still needs low level waste  
17 disposal, in spite of the fact that we oftentimes use short-  
18 lived isotopes. You can't forget the fact that our  
19 manufacturers who supply us with our short-lived isotopes  
20 generate low level waste in the process. If they have no place  
21 to put that low level waste, our supply of short-lived  
22 isotopes disappears, and our ability to treat and diagnose  
23 patients will disappear.

24 Also, there is a new technology, the cyclotron  
25 technology, which generates isotopes on site. These are also  
26 short-lived isotopes, but the by-products of that isotope  
27 generation is a material, a targeting material, that requires  
28



1 low level waste disposal. Just this week, they're putting one  
2 of these cyclotrons into the Sutter Hospital here in  
3 Sacramento, and there are others around the state.

4 The third of these false assumptions is that  
5 patient care will not suffer. Patient care will suffer if this  
6 Ward Valley site is delayed further because you initiate  
7 adjudicatory hearings as part of this process. The facts are  
8 that we don't have the ability to store material. At the  
9 University of California San Francisco, we have a maximum waste  
10 reduction program already in place. Last year, we generated  
11 12,000 cubic feet of radioactive low level waste. We  
12 compacted that down to 6,500 cubic feet of waste. That's 870  
13 55-gallon barrels. That's with maximum reduction.

14 We calculated, since we've already passed the time  
15 in California where we're going to be able to get the low level  
16 waste site open in time for the 1 January cutoff, we've been  
17 looking at what we're going to do, as part of our deliberations  
18 in our Radiation Control Committee at the University, which I'm  
19 a member of. They suspect they could probably easily store  
20 material on site for three months, six months at the outset.  
21 Beyond that, we're going to have to shut our researchers off.  
22 It's as simple as that.

23 My Nuclear Medicine operation will have to cease  
24 because I won't be able to get isotope supplies, and I won't  
25 have any place to put my low level waste, and I still do ship  
26 low level waste, even though we try to store for decay a  
27 majority of it.  
28



1                   So to sum up, all the issues raised here have  
2 already been studied and adequately answered and are well-  
3 documented. They do not, in the opinion of myself and the  
4 California Medical Association, justify further adjudicatory  
5 hearings.

6                   The California Medical Association requests that  
7 the Committee confirm the appointments of Mr. Gould and also of  
8 Dr. Coye today.

9                   If this Committee requires adjudicatory hearings on  
10 Ward Valley, you must be aware of the consequences of such a  
11 delay. And those are going to be that bio-medical research in  
12 California will stop in less than a year; multiple temporary  
13 waste storage sites will develop scattered in highly populated  
14 areas of the state, and this will be a real radiation hazards,  
15 unlike the Ward Valley site, which is not a real hazard; many  
16 patients will suffer needlessly.

17                  And I think you should be very aware of this, that  
18 your decision today will impact people, real people with real  
19 diseases who need real care. These people will suffer, and  
20 they will die early. This is particularly true of patients  
21 with heart disease, cancer, and from my institution, patients  
22 with AIDS.

23                  I thank you for your patience in hearing this. I  
24 have a few other comments that I've generated just listening to  
25 the discussion.

26                  My question is, where were the opponents who are  
27 now raising these issues during the past ten years, when we had  
28





1 all these other hearings and meetings? Why did they wait 'til  
2 the last minute? What are their motives?

3 The Ward Valley site was developed because of  
4 bipartisan law passed by the California Legislature. This is  
5 not without prior legislative hearing and/or debate.

6 The opponents to nuclear power will always have a  
7 complaint and will use any means to stop this or any other  
8 low level waste site as a weapon in their war against nuclear  
9 power plants. Even with adjudicatory hearings, these opponents  
10 would be expected to still use the courts to try and block a  
11 site for low level waste.

12 Interestingly, nuclear power plants have far more  
13 storage capacity on site than do the bio-medical researchers,  
14 hospitals, and universities, which will essentially need to  
15 stop operating in about a year at the outside.

16 Thanks a lot for your time.

17 SENATOR MELLO: Mr. Chairman.

18 CHAIRMAN ROBERTI: Senator Mello.

19 SENATOR MELLO: A couple of statements he made are,  
20 one, you state that the adjudicatory hearings will destroy any  
21 possibility of Ward Valley disposal site by needless delay.

22 You're not weighing the possibility of a needless  
23 delay if we go through the process put forth by Mr. Gould. I  
24 think one is as speculative as the other.

25 From my perspective, I see an awful lot of lawsuits  
26 brought against CEQA and all these other processes. They can  
27 tie you up in court.  
28



1                   But my second question, more importantly here,  
2 you're alleging that anti-nuclear power protesters and supposed  
3 environmental groups from outside California, such as  
4 Greenpeace, are looking for a way to stop any development of  
5 the Ward Valley site in their attempt to shut down nuclear  
6 power plants.

7                   Now California, my information is that we only have  
8 one left operating, Diablo Canyon. Mr. Willoughby was here a  
9 second ago from PG&E. I was going to ask him this question.

10                  I don't know of any single incident from any  
11 protesters at all, Greenpeace or anyone else, that they're  
12 trying to shut down Diablo Canyon.

13                  Do you have evidence of that to back up the  
14 statement you made?

15                  DR. LULL: Well, my comment comes merely from  
16 conversations that I've had with protesters.

17                  SENATOR MELLO: I'm talking about evidence. Do you  
18 have any evidence to back up your statement?

19                  DR. LULL: Just verbal comments that I've gotten  
20 from them is my evidence, and their statements that that's what  
21 they intend to accomplish.

22                  SENATOR MELLO: I'm going to check with the Sheriff  
23 down there in San Luis Obispo County. I have never heard,  
24 since those original protests of the start-up, where they tried  
25 to climb over the fence and there was many arrests made, but  
26 once the plant's been operating, the protests, I think, have  
27 disappeared. I don't know of a single one that's been made  
28



1 down there.

2 Now, as far as Rancho Seco, or San Onofre, those  
3 are shut down anyway. So is Humboldt.

4 So, I mean, you said conversations. I'm just  
5 looking for some evidence that Greenpeace and others are trying  
6 to protest the shutting down of Diablo Canyon.

7 DR. LULL: Senator Mello, the comment there is not  
8 that they are trying to shut Diablo Canyon. They are opposed  
9 to nuclear power plants in general and feel that the  
10 development of a low level waste site will allow continued  
11 operation of nuclear power plants. And I think that is the  
12 major agenda that is motivating National Greenpeace to become  
13 involved in this, and also to motivate certain other groups  
14 that have become active only recently as the Ward Valley site  
15 was approaching decision time.

16 SENATOR MELLO: Do you know of any utility anywhere  
17 in the United States that has any plans at all to build a  
18 nuclear generating plant?

19 DR. LULL: No, I know of none.

20 SENATOR MELLO: I don't either. They've abandoned  
21 that. PG&E, I know, I've been talking to them, they have  
22 absolutely no plans whatsoever of ever trying again to build a  
23 nuclear generating plant.

24 So, I just want to point out, I think you're trying  
25 to, you know, point out that Greenpeace and others are protest  
26 groups, which they -- I mean, Greenpeace, I don't belong to  
27 them, but I just give a lot of credit for what they're doing.  
28





1 They're trying to stop the taking of whales, and they're  
2 involved in a lot of environmental issues, as far as I'm  
3 concerned.

4 But I don't know, speaking for the one remaining  
5 plant in California, I don't know any protest groups trying to  
6 shut that down.

7 Thank you very much.

8 DR. LULL: You're welcome.

9 SENATOR PETRIS: Mr. Chairman.

10 CHAIRMAN ROBERTI: Senator Petris.

11 SENATOR PETRIS: I just have a couple.

12 I was going to ask the same question that you  
13 asked. One of the prior witnesses said that this site has been  
14 under consideration for eight years.

15 I wondered if your group and other similar groups  
16 leaned on the state to hurry up and get the process started and  
17 finished so that that site could be used as far back as eight  
18 years ago?

19 DR. LULL: I know that the California Medical  
20 Association was actively involved in overseeing the development  
21 process of the site. They felt that it was necessary to be  
22 able to have continued access to low level waste disposal in a  
23 safe fashion.

24 They were concerned that a waste site be developed  
25 in California in accordance with the requirements of the  
26 federal law, and the subsequently passed California state  
27 legislation, bringing this into being in a safe fashion that  
28



1 would protect the health and safety of the citizens of  
2 California, and allow the continued use of isotopes as  
3 necessary in the practice of medicine and for research.  
4

5 SENATOR PETRIS: Did they communicate the urgency  
6 of that to the Governor at the time?

7 DR. LULL: I believe that that's been communicated  
8 by the California Medical Association, and that they have  
9 repeatedly pointed out the necessity to meet the federally  
10 mandated deadlines for the Ward Valley site, or whichever site.  
11 Once Ward Valley was selected, and this was reviewed by the  
12 CMA, and felt to be an adequate location for shallow land  
13 burial, the CMA has supported that and the process, and urged  
14 completion of this process.

15 And that's why I'm here, is to continue to urge  
16 completion of that process, so that the patients that we take  
17 care of in California don't suffer because of a lack of needed  
18 diagnostic and therapeutic isotopes.

19 SENATOR PETRIS: Well, your testimony is very  
20 compelling, and it's also very frightening.

21 I'm wondering, with that degree of urgency, why the  
22 Medical Association didn't insist on having the Governor move  
23 very quickly, and having his Agency, prior to this nominee --  
24 years prior to this nominee -- move quickly on this, do  
25 whatever hearings are necessary, and get on with it?

26 I see a big gap here in the sense of urgency as  
27 it's expressed now, and its apparent lack of communication at  
28 that level with the Governor. I know it's past history, but



1 I'm curious about it.

2 Do you have any comment on that?

3 DR. LULL: Yes, Senator.

4 I believe that the California Medical Association  
5 did request a speedy approval, and did support adequate  
6 hearings.

7 It was the opinion of the Department of Health  
8 Services and of the CMA that hearings were quite adequate, that  
9 there was ample opportunity for protest, for resolution of the  
10 protest that were -- every protest that was made, and comment  
11 was adequately answered by the Department of Health Services.

12 SENATOR PETRIS: Did you testify, did you speak at  
13 any of these meetings?

14 DR. LULL: I didn't personally, but there were  
15 others who spoke on behalf of CMA, yes.

16 SENATOR PETRIS: Would you have been willing?

17 DR. LULL: Oh, yes, I would have.

18 SENATOR PETRIS: Would you have been willing to  
19 defend your position in a more formal proceeding under cross  
20 examination and under oath?

21 DR. LULL: I would have been very willing to do  
22 that, and would still be willing to do that.

23 However, I would point out that I don't believe  
24 that oath and cross examination would elucidate the safety and  
25 health of this site any better than has already been done by  
26 the process that's occurred up to this point.

27 SENATOR PETRIS: Speaking as an attorney, I can  
28





1 tell you, you'd be surprised how elucidating some of the  
2 questions can be, and how much light can be shed in that  
3 process.

4 I know it's not the normal process that a citizen  
5 goes through.

6 It seems to me that you have tremendous confidence  
7 in your position, and that you would have and should have been  
8 a witness in a more formal proceeding years and years ago, and  
9 that you would have alleviated the concern that I have, which  
10 naturally flows from a refusal to have this adjudicatory  
11 hearing.

12 I don't know why it's in the code if it doesn't  
13 apply.

14 You would have given a good account of yourself.  
15 You don't have anything to hide, do you? Are you afraid to  
16 face somebody --

17 DR. LULL: No, sir.

18 SENATOR PETRIS: -- that's questioning you that may  
19 be hostile, that maybe has a client that has a different  
20 approach? You wouldn't shy away from that, would you?

21 DR. LULL: No, Senator. I don't believe any -- I  
22 don't know of anyone who seems to have anything to hide who is  
23 a proponent for the low level waste site development.

24 SENATOR PETRIS: Okay, then --

25 DR. LULL: And I understand your concern that it's  
26 so late now, because that's our emphasis. Our emphasis is  
27 that, for whatever reason, it is late, and requesting an  
28



1 adjudicatory hearing now will hurt people, and it will have a  
2 profound impact on the -- on medicine and on the bio-medical  
3 research industry throughout California.

4           SENATOR PETRIS: Has this eight-year delay hurt  
5 people?

6           DR. LULL: During this eight years, we have had  
7 access to the low level waste site in Nevada and Washington  
8 State, and will until the first of January, according to the --  
9 we have a ten-year period to develop a low level waste site in  
10 this Southwest Compact. The time is running out, and as of  
11 1 January 1993, that we will no longer be able to ship our  
12 wastes to the shallow land burial sites that are currently  
13 operating and receiving all of California's radioactive waste  
14 in Washington State and Nevada.

15           I can tell you that the low level waste site that's  
16 been designed at Ward Valley is superior to either of those  
17 sites.

18           SENATOR PETRIS: You're familiar with it?

19           DR. LULL: Sufficiently, yes. I'm not the most  
20 expert of the people around, but I'm sufficiently familiar with  
21 it to know that this is a superior site.

22           This is probably a better site than any that have  
23 ever been developed for radioactive waste disposal in terms of  
24 safety for the surrounding area and for the environment.

25           SENATOR PETRIS: Thank you.

26           DR. LULL: You're welcome.

27           SENATOR MELLO: Mr. Chairman.  
28



1 CHAIRMAN ROBERTI: Senator Mello.

2 SENATOR MELLO: Clarification of a statement that  
3 he said that January 1st, 1993, you'll be denied access to  
4 these sites in Washington and is it Arizona?

5 DR. LULL: In Nevada.

6 SENATOR MELLO: Nevada.

7 My understanding of the law is, they're not going  
8 to deny access, but the EPA and the NRC said that these states  
9 may, may choose not to accept this low level waste from other  
10 states, including California, as of that date.

11 There's nothing to prohibit them, as I understand  
12 it, the decision, from accepting this low level waste, but they  
13 have the option of not accepting it.

14 DR. LULL: Well, I have -- I probably couldn't  
15 satisfy your need for proof on this, but I have attended  
16 meetings where the responsible officials in those states have  
17 stated that they will cut us off. I believe they've done that  
18 in writing, but I don't have a copy of that.

19 SENATOR MELLO: They might, but under the law that  
20 I understand, it said that they can choose not to accept your  
21 waste as of that date, from that date forward.

22 DR. LULL: They've said that they will not accept  
23 it, and we've been put on notice.

24 And so, that's why we're concerned, because we  
25 already are less than a year away from that, and I've been told  
26 that it will take at least a year to build the low level waste  
27 site should it get licensed. That's why our discussions in our  
28





1 Isotope Committee at the University of California San Francisco  
2 have achieved such urgency in terms of what we're going to do.  
3 Because we know that already now the time is ticking away where  
4 we're going to have to store on site, because there will be no  
5 place to ship it in next January and February and March. We're  
6 already three months down the pike.

7  
8 We've only got a couple more months, and we're  
9 going to -- we won't have space. We don't know -- maybe we'll  
10 come up with a clever idea, but we don't know what that idea is  
11 right at this moment, Senator.

12 So, it will affect our programs, and it will affect  
13 our researchers, and it will affect our patient care, both in  
14 nuclear medicine and radiation therapy. It'll affect cancer  
15 patients, cardiac patients, and most profoundly AIDS patients.

16 SENATOR PETRIS: I'm sorry, another question.

17 CHAIRMAN ROBERTI: Senator Petris.

18 SENATOR PETRIS: Are you familiar with the company  
19 that's the designee, Ecology U.S.A.?

20 DR. LULL: U.S. Ecology?

21 SENATOR PETRIS: Yes, U.S. Ecology.

22 DR. LULL: I'm somewhat familiar with them, yes.

23 SENATOR PETRIS: One of the reasons for opposition  
24 here is that they seem to have had a pretty bad track record in  
25 two other states where they're being sued. And they were  
26 denied an application in a third state because of the track  
27 record in the other two.

28 It seems to me that ought to be cause for concern.



1 But you're not familiar enough with their --

2 DR. LULL: Well, I'm familiar with some of those --  
3 some of those charges and the concerns, and I can understand  
4 where superficially one might be concerned.

5 But the company that had those original -- those  
6 other sites were essentially -- it was essentially a different  
7 company. And this company now owns two of the three operating  
8 sites in the country and has been operating them. Without  
9 them, we wouldn't -- we'd be in a mess already and have no  
10 place to put our radioactive waste.

11 They seem to be doing a very adequate job in those  
12 other sites. And we believe that their track record, and their  
13 ability to stand behind the safe operation of this site has  
14 been guaranteed by the structure of the entire compact  
15 agreement and the controls that have been placed upon them by  
16 the State of California.

17 SENATOR PETRIS: Is that with the knowledge of  
18 what's happened in the other states?

19 DR. LULL: That's with the knowledge, yes. That  
20 was not hidden knowledge. That was well-known by everybody  
21 from the beginning, from when they first applied for the  
22 contract.

23 SENATOR PETRIS: So you feel whatever mistakes were  
24 made back there are not likely to be repeated here?

25 DR. LULL: As a matter of fact, it's interesting.  
26 One of the mistakes was one where -- which seemed to be related  
27 to the use of liners, something which the opponents of the site  
28



1 have insisted should be done, which actually was the source,  
2 which is why the NRC no longer -- actually specifies that you  
3 not use liners, because they feel it's actually a radiation  
4 hazard. And so, it's interesting how people switch stories and  
5 use one part of it against them, and another part propose that  
6 as something we should have, as what appears to be, although I  
7 couldn't prove it, but it appears to be motivated as a delaying  
8 tactic rather than based on a scientific need.

9 SENATOR PETRIS: Thank you.

10 CHAIRMAN ROBERTI: I think we should break for five  
11 minutes right now.

12 [Thereupon a brief recess was taken.]

13 CHAIRMAN ROBERTI: Dr. Lull, we were listening to  
14 you. You may continue.

15 DR. LULL: I'm responding to questions, if there  
16 are any.

17 CHAIRMAN ROBERTI: Any questions of Dr. Lull?

18 No, thank you for your testimony.

19 DR. LULL: You're welcome. Thank you for  
20 listening to me.

21 Next witness, please.

22 MR. COOK: My name is Ed Cook. I'm Vice President  
23 of Operations for Gen-Probe Incorporated in San Diego.

24 I'm here today to represent Gen-Probe and the  
25 biotech manufacturing industry in San Diego. Gen-Probe  
26 develops, manufactures, and markets medical diagnostic kits.  
27 We're the world leader in commercialization of genetic-based  
28





1 diagnostic tests, specializing in the rapid detection of  
2 infectious and life-threatening diseases. Gen-Probe currently  
3 markets three radioactively labeled products.

4           During the past four years, we have modified our  
5 production processes and methods to reduce already low  
6 personnel exposure rates to non-detectable levels for most  
7 employees. We have replaced four radioactively labeled  
8 products with non-radioactive substitutes. Currently we have a  
9 fifth product in clinical trials which, if successful, will  
10 replace yet another radioactive labeled product.

11           We also have an ongoing program to try short  
12 half-life radioactive isotopes and non-radioactive methods as  
13 alternatives in both research and manufacturing. I must point  
14 out, however, that non-radioactive alternatives, such as  
15 luminescent labels, do not eliminate the need for use of  
16 long-lived radioactive elements in biotech manufacturing.

17           Even for our non-radioactive products,  
18 radioisotopes are used in the purification and quality control  
19 processes.

20           Radioisotopes are also utilized for the maintenance  
21 and quality assurance of several common types of luminometers.  
22 These luminometers are light-reading instruments utilized with  
23 these diagnostic tests, both by manufacturers of the tests and  
24 by the hospitals and clinical laboratories who use these tests.

25           Finally, the rush to non-radioactive alternatives  
26 must be undertaken cautiously, due to the potential for  
27 exposure to chemical substances which may be more hazardous and  
28



1 less easily monitored than the radioactive materials being  
2 replaced.

3           Gen-Probe has committed significant resources to  
4 minimizing uses of radioactive materials. We have not been  
5 able to eliminate the use of long-life radioactive isotopes,  
6 nor will we be able to in the foreseeable future.

7           I was quite disturbed by misinformation provided to  
8 this Committee on March 18, indicating that use of short-lived  
9 isotopes and radioactive substitutes negated the need for a  
10 disposal facility. On-site storage of radioactive wastes will  
11 create a significant burden to biotech manufacturing firms in  
12 California.

13           Other biotech manufacturing firms in San Diego have  
14 stated their serious concern that they may be forced to  
15 relocate outside of California.

16           I have here a binder containing 105 letters  
17 supporting the Ward Valley project. Included are numerous  
18 letters from biotechnology executives documenting the  
19 importance of radioactive waste disposal to our industry.

20           I urge this Committee to recommend confirmation of  
21 Russell Gould without any conditions linked to the Ward Valley  
22 project.

23           I would be pleased to answer any questions that the  
24 Committee may have.

25           CHAIRMAN ROBERTI: Thank you very much.

26           Are there any questions? No questions. Thank you  
27 very much.  
28



1 MR. COOK: Thank you.

2 CHAIRMAN ROBERTI: Next witness, please.

3 MR. WALLIS: Mr. Chairman, Members of the  
4 Committee, I am Lynn R. Wallis, Manager of Media and  
5 Environmental Information Programs for G.E. Nuclear Energy, and  
6 a consultant in Health Physics and Nuclear Safety for all G.E.  
7 company operations, worldwide.

8 I'm a physicist by education, and a licensed  
9 professional nuclear engineer in the State of California, as  
10 well as a member of the board of the CAL RAD Forum.

11 I have 33 years of professional experience in the  
12 nuclear field, and I'm pleased to have this opportunity to  
13 testify before you today.

14 Over the past several years, the State of  
15 California, through its many agencies, has reviewed in detail  
16 and at great expense the issues associated with the proposed  
17 low level radioactive waste disposal site at Ward Valley. In  
18 my view, all legitimate technical issues have been answered,  
19 and the safety of the storage techniques has been established.

20 It is time to move ahead with the construction and  
21 operation of the site. California should be focusing on the  
22 federally mandated site opening date of January 1, 1993.

23 As you're well aware, federal law requires that  
24 each state or region site a low level radioactive disposal  
25 facility by January 1, 1993. After that date, there will be no  
26 place for California companies to ship such waste if other  
27 sites are closed. And storing waste on site will be the only  
28





1 option, as you've already heard, an option that is sure to be  
2 expensive, burdensome, and ultimately politically explosive for  
3 companies, hospitals, and universities in urban areas.

4 Termination of programs, again as you've heard, may  
5 be the only long-term option, an option that would adversely  
6 affect health care in California.

7 It sounds like the stuff of science fiction, but a  
8 new innovation, the cobalt-60 gamma knife -- I have one right  
9 here. Before you evacuate the room, I assure you it's a  
10 non-radioactive variety. It enables doctors to perform brain  
11 surgery without a scalpel. Instead, they cut out tumors with  
12 finely focused rays of radiation. The knife is being used by  
13 medical centers around the world, including California, on  
14 patients with previously inoperable brain tumors. So far,  
15 nearly 4,000 patients are reported to have recovered after  
16 treatment with the gamma knife. For people without hope, the  
17 gamma knife offers hope.

18 Unfortunately, this tool may become unavailable  
19 worldwide if the radiation sources can no longer be produced in  
20 California because of an inability to dispose of the low level  
21 waste produced in their manufacture. The knife is produced by  
22 no other company in the world.

23 Because the uses of radioactive materials are so  
24 diverse and widespread throughout the economic and the  
25 institutional life of California, it really is difficult to  
26 quantify a dollar value for that portion of the state's economy  
27 that will be at risk. But it's obvious that there would be  
28



1 economic impact because the use of radiation and radioactive  
2 materials is so diverse throughout the state's economy.

3           Radioisotopes are used in research, in addition to  
4 medical applications, research and pharmacology, biochemistry,  
5 genetics, physiology, microbiology, immunology, ecology,  
6 geology, and there are various chemistry, physics, and  
7 engineering sciences that all require the use of radioactive  
8 materials. And you've already heard described some of the  
9 University of California programs that use radioactive  
10 materials.

11           At a minimum, further delay will only serve to  
12 increase costs for disposal, a burden which I believe is  
13 unnecessary and inexcusable.

14           I urge you to take prompt action to resolve the  
15 current impasse by confirming Russell Gould. Delays are  
16 unnecessary and potentially would be damaging to the state's  
17 best interests.

18           Thank you.

19           CHAIRMAN ROBERTI: Thank you very much.

20           Any questions? Senator Petris.

21           SENATOR PETRIS: Well, that's very interesting  
22 testimony, but it doesn't speak to the process, and it doesn't  
23 speak to why all this wasn't done eight years ago.

24           Now that the process is being insisted upon,  
25 there's a big emergency and a delay problem.

26           I find it fascinating, that enormous contribution,  
27 that one little thing you offered us, because I don't know of  
28



1 anybody in this room that's says stop making those things, you  
2 know.

3 MR. WALLIS: I don't think anybody in this room  
4 would like to see the device, you know, the stopping of the  
5 manufacturing of the devices, but that would be the end result  
6 if we have no place to ship our waste.

7 We also manufacture a lot of the radioisotopes used  
8 by the hospitals. That generates low level waste, and you  
9 know, without a place to dispose of it, we can't produce those  
10 devices as well.

11 This device has to come back to our facilities  
12 every five years for recycling and re-manufacturing. So, it's  
13 not just something you manufacture and put out and forget. It  
14 does come back.

15 SENATOR PETRIS: Do you track it, keep a record of  
16 where all of them are?

17 MR. WALLIS: That's right.

18 And rather than throw it away, we're going to  
19 re-manufacture it. But to re-manufacture it, we produce low  
20 level waste.

21 SENATOR PETRIS: How long does it take to produce  
22 one of those?

23 MR. WALLIS: Well, we can produce one of these  
24 probably -- actually, it takes 12 of these for the device used  
25 in the hospital. Twelve of these kinds of sources.

26 We can produce one of these, you know, in a week.  
27 It's an art. It has taken us 30 years. We have put in place  
28





1 facilities over these 30 years that allow us to manufacture the  
2 device. The French have tried; they've failed. The Canadians  
3 have tried; they have failed. We are the only manufacturer  
4 because we have the expertise.

5 SENATOR PETRIS: And you're in San Diego?

6 MR. WALLIS: We're in the Bay Area.

7 SENATOR PETRIS: Oh, the Bay Area.

8 MR. WALLIS: Yes, our headquarters is located in  
9 San Jose.

10 SENATOR PETRIS: Now what's it called again, a  
11 gamma knife?

12 MR. WALLIS: It's a gamma knife, yes, sir.

13 SENATOR PETRIS: As in alpha, beta, gamma?

14 MR. WALLIS: Yes, sir. It's cobalt-60. The rays  
15 are focused into the area in the brain where the tumor exists,  
16 or the cancer. You know, some are inoperable. You can't get  
17 to it with a knife. This device can cure the individual. And  
18 it's unique.

19 SENATOR PETRIS: Thank you.

20 CHAIRMAN ROBERTI: Any other questions?

21 Next witness.

22 MR. LAPALLA: Good afternoon. My name is Eric  
23 Lapalla. I'm Senior Vice President for Harding Lawson  
24 Associates, and a principal hydrogeologist with that firm.

25 I welcome the opportunity to speak with you today.

26 In terms of credentials, I have over 24 years of  
27 experience as a professional practicing hydrogeologist, 13 of  
28



1 those were with the U.S. Geological Survey, the nation's  
2 foremost independent expert agency in evaluating hydrogeologic  
3 problems. While at that agency, I spend five years on the  
4 research of the flow and transport processes involved with  
5 problems of disposal of both high and low level radioactive  
6 waste in arid environments.

7 I've been involved with the process that -- the  
8 processes that have resulted in the selection and  
9 characterization of the Ward Valley site since 1983. That is  
10 significant, because the Ward Valley site did not just happen.  
11 We went looking for an ideal site.

12 Since the inception of this project, I've been  
13 involved in directing our field investigations as well as our  
14 scientific and engineering assessment as to the suitability of  
15 the Ward Valley to meet the requirements of an ideal site.

16 The ideal site has been defined in several places.  
17 They've been defined in Nuclear Regulatory requirements. They  
18 have also been defined in various publications of the U.S.  
19 Geological Survey, most recently a symposium that was held in  
20 Big Bear Lake in 1987, in which the U.S. Geological Survey  
21 concluded that an ideal site anywhere in the country for the  
22 disposal of low level radioactive waste would be in an area of  
23 extreme aridity, low precipitation, a very thick zone between  
24 the land surface and the water table; a zone that was  
25 predictable in terms of how water migrated through that zone,  
26 and an area that was distant from any potential uses of  
27 groundwater, and an area that the transport of groundwater both  
28



1 from land surface to the water table and to the discharge point  
2 in the basin could be predicted. In fact, it is a requirement  
3 of the State of California, as well as NRC, that a site must be  
4 capable of being characterized, modeled, and monitored.

5 The reason I'm here today is to correct four  
6 statements that have been entered into the record of this  
7 hearing and in other forums across the country, including in  
8 Washington, D.C., that are incorrect with regard to analyses  
9 that have been made at the Ward Valley site.

10 The first incorrect statement is that the  
11 assessment of recharge at the site was relied on the comparison  
12 of only total annual precipitation at the site, balanced  
13 against the total annual evaporation at the site, and that that  
14 comparison was only made based upon one year's data. That is  
15 an incorrect statement, as I will show you in a moment.

16 The second incorrect statement is that the  
17 observation of tritium in soil gas at the site to depths of 100  
18 feet could only have resulted, could only be present, as a  
19 result of infiltration of precipitation from the land surface  
20 down to 100 feet, and that such infiltration and transport  
21 occurred in less than 35 years. That is an incorrect  
22 interpretation of the facts.

23 Third incorrect statement that was made was that  
24 the models that have been used to characterize this site, that  
25 have been used for performance assessment to demonstrate the  
26 protectiveness of the site, are incorrect because they've been  
27 based upon erroneous data and fallacious assumptions. That is  
28





1 an incorrect statement.

2           The fourth item is that the Ward -- the valley in  
3 which the Ward Valley site exists, Ward Valley, is --  
4 discharges both surface water and groundwater to the Colorado  
5 River. And the claim has been made that there are U.S.  
6 Geological Survey reports that state this. That is also  
7 incorrect.

8           With regard to the first issue, moisture movement  
9 at the site, particularly the recharge to the groundwater,  
10 there have been hundreds of actual measurements at the site  
11 that clearly show that the net movement of water is upward at  
12 the site.

13           Now, you have to understand that water moves as a  
14 liquid; it moves as a gas, as water vapor, and it moves in  
15 response to the gravity; it moves in response to pressure  
16 gradients, and it moves in response to temperature gradients.

17           The upward movement at the site is caused by the  
18 fact that it doesn't rain very much there. There are plants on  
19 that desert floor which, if you've been out to the desert, you  
20 know that they don't occupy the whole desert floor. There's a  
21 reason for that. The roots from those plants are very shallow  
22 rooted, and they are -- extend to the areas between the plants  
23 to capture all the precipitation, or virtually all of it, that  
24 falls on the land surface. Otherwise, they couldn't survive.

25           Precipitation during storm events does in fact  
26 infiltrate the surface. However, it only moves to a depth of  
27 less than a few feet before it moves back upward by evaporation  
28



1 due to the dry atmosphere, as well as to -- as by extraction by  
2 these plant roots.

3           Although all the measurements at the site show that  
4 there is a net potential upward gradient at the site, even if  
5 that were not true, even if there were a downward gradient with  
6 a unit gradient of one, because of dryness of the site, and the  
7 ability of the materials between the land surface and the water  
8 table to conduct moisture because of the low potential of that  
9 at such dry conditions, the recharge rate at the site would be  
10 less than four-ten thousandths of an inch a year. This is  
11 using an analysis that is a similar analysis that was done at  
12 the Beatty site, which has been accepted by the U.S. Geological  
13 Survey.

14           The ability of the unsaturated zone between the  
15 land surface and the water table to retain large volumes of  
16 water is an important part of the site. It is the buffer zone,  
17 it is the primary line of defense against groundwater  
18 contamination at the site. So, it's important that this zone  
19 be able to retain any volumes of water that might fall on it  
20 and infiltrate.

21           To demonstrate that this zone has such capability,  
22 we performed an infiltration test. We ponded water on the  
23 site to a depth of three feet, at an experimental site, and we  
24 allowed it to infiltrate, and we measured what happened to that  
25 water. At the end of this experiment, which the initial were  
26 -- occurred -- took place over a period of over six months, the  
27 -- this volume of water, which is equal to ten times what the  
28



1 100-year storm event is, which is a storm that would occur with  
2 an occurrence interval of 100 years, was retained in the upper  
3 25-30 feet of the unsaturated zone, even though the conditions  
4 of our test did not allow for evaporation at the land surface  
5 or use by plants.

6 Furthermore, evidence that recharge does not occur,  
7 or occurs in very, very low amounts at the site, is, we did  
8 actual age dating of the water immediately below the site using  
9 carbon-14 and other isotopes, naturally occurring isotopes.  
10 This age dating showed that the groundwater is at least 17,000  
11 years old immediately below the site.

12 What that means is that it takes at least 17,000  
13 years, if recharge does occur from the land surface above the  
14 site, to reach the water table. There's more than adequate  
15 enough time for tritium, which is the issue of concern, one of  
16 the issues of concern, to decay to acceptable levels.

17 SENATOR PETRIS: Excuse me.

18 What distance is that?

19 MR. LAPALLA: That's a distance of 650 feet. It's  
20 -- the distance to the water table is between 650 and 700 feet  
21 at the site.

22 SENATOR PETRIS: Is that the only source of that  
23 water?

24 MR. LAPALLA: The only source of the recharge  
25 water?

26 SENATOR PETRIS: No, the samples.

27 MR. LAPALLA: The samples that were taken were from  
28





1 immediately below the water table, so it's likely that they  
2 came either from immediately above, or they were transported  
3 in.  
4

5 Even if they were transported in from distant  
6 places, where -- at the valley edges, which is typically where  
7 recharge does occur in desert basins, the streams flow off the  
8 mountains. You've all seen that they disappear before they go  
9 out across bajadas, that's the source of recharge in the desert  
10 basin. It is not recharge on the floor of the valleys.

11 Does that answer your question?

12 SENATOR PETRIS: Yes, thank you.

13 MR. LAPALLA: The third issue is the explanation  
14 that has been given by the opponents of the occurrence of  
15 tritium at the site.

16 Tritium was measured at the site because it is a  
17 naturally occurring, as well as a manmade, isotope. It occurs  
18 in the atmosphere. It results from cosmic radiation. It also  
19 occurs in the atmosphere as a result of atmospheric testing  
20 prior to the cessation of that activity.

21 There's a requirement under the licensing  
22 requirements to document what the background concentrations of  
23 naturally occurring, or of any occurring radionuclides are at  
24 sites, and this is why the measurements were taken.

25 The measurements were taken by extracting samples  
26 of soil gas, not soil water, but soil gas out of the zone  
27 because the conditions are so dry that you cannot extract soil  
28 moisture out of the -- excuse me, the unsaturated zone above



1 the water table.

2           It's also important to note that we tested for  
3 tritium in the groundwater immediately below the site, and it  
4 was not detectable at levels that are 1,000 times less than the  
5 detections levels that are required by EPA and NRC for drinking  
6 water.

7           The levels of detection -- the levels of tritium  
8 that were detected at the site decayed from levels of  
9 approximately 20 at the land surface, to the detection level at  
10 100 feet. Even the highest levels that were detected are  
11 10,000 times less than the U.S. EPA drinking water standard for  
12 tritium.

13           After considering all of the mechanisms and driving  
14 forces that might drive tritium to depths of 100 feet,  
15 including looking at recharge from precipitation, the most  
16 scientifically correct explanation of the information, the  
17 data that was obtained is simple diffusion downward from the  
18 land surface.

19           Let me explain to you what diffusion is. When  
20 somebody walks into a room with perfume on, or an after shave  
21 on, and walks past you, you smell it immediately. That is  
22 diffusion at work.

23           Diffusion occurs when chemicals move from places  
24 where they're highly concentrated to places where they are not  
25 so highly concentrated. It is a very efficient mechanism for  
26 moving vapor -- chemicals that occur in a vapor state through  
27 soil, air, and through the atmosphere.  
28



1           After evaluating all of the mechanisms at the site  
2 -- gravity, downward movement of rainfall, and diffusion -- the  
3 best explanation for the observed data at the site is that  
4 simple diffusion from the highly -- high concentrations in the  
5 atmosphere down to extinction at 100 feet. This mechanism was  
6 reviewed by an independent panel that was convened by the State  
7 Department of Health Services, and that panel concurred that  
8 that was the most technically and scientifically correct  
9 explanation.

10           Clearly, the observed tritium distribution cannot  
11 best be explained by the opponents' position that the only  
12 explanation was downward percolation of precipitation. In  
13 fact, the observed tritium distribution supports models of  
14 moisture movement and occurrence at the site that have been  
15 used in the license application.

16           The third incorrect statement is the correctness of  
17 models that were used for evaluating the protectiveness of the  
18 site. Models are required to be used to evaluate these sites  
19 in the State of California and federal regulations. The models  
20 that were used for Ward Valley are correct for several reasons.  
21 They were based on sound scientific principles. They have been  
22 independently determined to provide accurate answers. They  
23 have been constructed with site-specific data, and they have  
24 been tested against site-specific conditions, both under  
25 expected conditions and under unexpected conditions such as the  
26 infiltration test that I mentioned, where we applied ten times  
27 the expected 100-year rainfall.  
28





1           The models used are state of the art. They have  
2 been approved by a wide range of public agencies and interest  
3 groups, including the California Department of Health Services,  
4 their technical review consultants, the U.S. EPA, the U.S.  
5 Geological Survey, and in fact, a recent study performed for  
6 the Department of Energy by Sandian National Laboratories in  
7 Albuquerque determined that the model -- the principal model  
8 that was used for performance evaluation at the Ward Valley  
9 site was the most accurate models of all the models that they  
10 tested of moisture migration.

11           The correctness of the models is also clearly  
12 demonstrated by their ability to not only reproduce the  
13 expected climatic conditions, but as I mentioned, conditions  
14 under the infiltration that we observed during the infiltration  
15 test.

16           The fourth issue that I would like to correct the  
17 record for is the discharge of groundwater to the Colorado  
18 River. The U.S.G.S. reports clearly state that Danby Lake,  
19 which is located 40 miles from the Ward Valley site, is the  
20 eventual discharge point for groundwater that occurs in the  
21 upper part of the valley, and particularly under the Ward  
22 Valley site.

23           Secondly, that report states that a groundwater  
24 divide occurs between Ward Valley and the valley between Ward  
25 Valley and the Colorado River, or Vidal Valley.

26           In order for groundwater to move out of Ward  
27 Valley, any groundwater, that groundwater divide would have to  
28



1 disappear. And the only way that the U.S.G.S. concluded that  
2 that could occur is if the Colorado River were entrenched  
3 several dozens or tens of dozens of feet below its present base  
4 level, a very unlikely event.

5 I appreciate the opportunity to correct the record  
6 on these technical issues.

7 I, too, urge you to proceed with the confirmation  
8 matter that's before you, independent of the technical issues  
9 of this site. We feel that we did a sound, scientific job of  
10 locating an ideal site, a sound scientific and defensible job  
11 of documenting that that in fact was the case, and that we have  
12 complied with the requirements of the State of California for  
13 siting such a site.

14 Thank you, and I'd be glad to answer any questions.

15 CHAIRMAN ROBERTI: Thank you, Mr. Lapalla. There  
16 are no questions, but thank you for your testimony.

17 The next witness.

18 If the witnesses could keep the testimony  
19 relatively brief, and I know it's technical and important.

20 MR. GAYNOR: Mr. Chairman, Members of the  
21 Committee, thank you for allowing us this opportunity.

22 My name is Ronald Gaynor. I am Senior Vice  
23 President of U.S. Ecology, the company selected to develop the  
24 Ward Valley disposal facility. With me is Steve Romano, who is  
25 Vice President of U.S. Ecology.

26 In 1983, the Legislature gave the Department of  
27 Health Services a difficult and very important job. They were  
28



1 required to develop regulations for low level radioactive waste  
2 disposal and find a private developer to establish a disposal  
3 facility for California.  
4

5 In the last eight years, the Department has  
6 performed that task admirably. It has developed a program that  
7 has resulted in the selection of an excellent site and a sound  
8 technology with the full involvement of all the effected  
9 public.

10 To hold Secretary Gould's confirmation hostage as a  
11 result of the Department's progress would be a travesty.  
12 California's approach has been hailed nationally as the model  
13 process for involving the public, and is being duplicated in  
14 other states.

15 The Department continually receives high marks from  
16 the Nuclear Regulatory Commission, which audits its program on  
17 an annual basis. The Department has consistently taken the  
18 conservative and cautious approach in protecting public health  
19 and the environment in this regard. In technical matters, they  
20 have hired nationally recognized experts to augment their  
21 qualified staff for the licensing review support. Where there  
22 has been technical controversy, they have arranged expert  
23 committees which involved all interested parties, both public  
24 parties and state and federal agencies to provide independent  
25 input to the process.

26 They have also gone the extra mile in public  
27 involvement. In addition to hearings on the Draft  
28 Environmental Impact Report and the license, the Department





1 held hearings on the Final Environmental Impact Report. These  
2 latter hearings were not required and are not commonly held.  
3 Public comment periods were extended beyond legal requirements  
4 in response to public requests to allow additional time for the  
5 submittal of written evidence. Public documents rooms were  
6 established throughout the state to provide interested citizens  
7 with an opportunity to review licensing documents and  
8 environmental analyses.

9  
10 In fact, project opponents have had full  
11 opportunity to review all of the licensing information and to  
12 enter their own evidence into the record, and in return, the  
13 Department has responded and addressed all of the issues that  
14 have been raised without regard to their source or their  
15 significance.

16 Unfortunately, this project has become the focus of  
17 a nationally coordinated, aggressive, misinformation campaign.  
18 You've heard from a number of other speakers today who have  
19 corrected some of those distortions put forward by the  
20 opponents to any California low level radioactive waste  
21 disposal facility.

22 I would like to clarify some additional  
23 misinformation related to the waste which requires disposal and  
24 where it comes from.

25 U.S. Ecology is the licensed operator of the  
26 facilities in Nevada and Washington, and as such, U.S. Ecology  
27 is the legal custodian of all of the manifest shipping papers  
28 for the waste from California and other states that goes to



1 those facilities. State regulators in Washington and Nevada  
2 inspect all of those shipments and verify the accuracy of the  
3 manifests. This information is both reliable and available to  
4 appropriate regulatory agencies or the public.

5 It is clear that long-lived radioactive waste is  
6 produced by non-utility waste producers as well as power  
7 plants. This long-lived waste does not just come from nuclear  
8 power plants, as the project's opponents have claimed. Non-  
9 power plant examples include: carbon-14 with a half-life of  
10 over 5,000 years; radium-226 with a half-life of 1600 years;  
11 and other isotopes that you've heard mentioned today.

12 Just this week, we received a request to assist in  
13 the disposal of americium-241 that has a half-life of 433  
14 years. The requester is a major Hollywood motion picture  
15 company who is decommissioning some of their smoke detectors.  
16 The americium is an element that is within these smoke  
17 detectors.

18 U.S. Ecology has disposed of California's low level  
19 radioactive waste for 30 years. That anniversary is this year.  
20 The Beatty facility opened in October of 1962. At the end of  
21 this year, however, we will no longer be able to dispose of  
22 California's waste, since federal law and the states of  
23 Washington and Nevada will no longer allow it.

24 The waste we now take from California's  
25 universities, hospitals, pharmaceutical and research companies,  
26 and nuclear power plants, will begin to pile up at the more  
27 than 500 locations throughout California where this waste is  
28



1 produced. There will be no place to ship this waste after  
2 January 1st, 1993.

3 If California's citizens are to be protected from  
4 500 many low level radioactive waste sites in urban areas all  
5 over this state, the development of the Ward Valley facility is  
6 critical.

7 Lawsuits seeking judicial review of the  
8 Department's licensing decision are inevitable. These will  
9 cause additional delay in the waste disposal facility's  
10 development.

11 Holding an unnecessary, not legally required,  
12 adjudicatory hearing will not lessen the chance of delays due  
13 to court challenges. If these hearings are conducted, DHS  
14 still has the responsibility for making the licensing decision,  
15 and the results of that decision, whatever it is, is still  
16 subject to judicial review.

17 Waste producers will almost certainly be storing  
18 their waste on site in hundreds of urban locations for a year  
19 or more already because of the late date. If adjudicatory  
20 hearings are now to be held, the project's delays will be  
21 extended by whatever time is required for those hearings.

22 California now has a low level radioactive waste  
23 disposal program which meets the spirit, the intent, and the  
24 letter of the law as adopted by this Legislature. The  
25 Department of Health Services has done a most credible job in  
26 providing the regulatory framework for site selection, safety,  
27 management, and oversight.  
28





1                   This project should not needlessly be delayed by  
2 unnecessary adjudicatory hearings which are not required either  
3 by state or federal law, including the NRC and its procedures.  
4 This project, which is today a model for the nation, has been  
5 under public scrutiny for eight years. Secretary Gould is  
6 carrying out the program mandated by the Legislature and  
7 successfully implemented by his predecessors.

8                   You have relied on his judgment and integrity in  
9 the past, and you know him to be an outstanding government  
10 official. We respectfully urge that you recommend his  
11 appointment be confirmed by the full Senate.

12                   Thank you, and I'd be happy to answer any  
13 questions.

14                   CHAIRMAN ROBERTI: Thank you very much.

15                   Any further questions?

16                   Next witness.

17                   DR. PASTERNAK: Chairman Roberti, Members of the  
18 Committee, my name is Dr. Alan Pasternak. I'm Technical  
19 Director for the CAL Radioactive Management Forum.

20                   The Forum is an association of corporations and  
21 institutions in California and other states of the Southern  
22 Compact that use radioactive materials and generate low level  
23 radioactive waste. You've already heard from some of the other  
24 members -- Dr. Lull is a member of our Board; the California  
25 Medical Association is a member of the CAL RAD Forum; so is  
26 Gen-Probe; General Electric; and the Southern California Health  
27 Physics Society; Cedars Sinai; Kyron -- so, you've heard from  
28



1 some of our members on issues close to them.

2 I would like to touch briefly on three issues that  
3 have not been put to the public fore. One has to do with  
4 liability and the applicability of the liability issue in the  
5 comprehensive environmental response to the federal act.  
6 Secondly, I'd like to discuss briefly the appropriateness of  
7 the requested adjudicatory hearing. And finally, another issue  
8 which has been discussed is the impact of the current  
9 litigation before the United States Supreme Court.

10 We believe it is very unlikely that the issue of  
11 liability connected to an issue of -- connected to some sort of  
12 response at the Ward Valley facility would necessitate adjudi-  
13 catory hearing. You've heard testimony on the qualifications  
14 of the proposed operator and the characteristics of the site.

15 In addition, the regulations adopted, the  
16 regulations of the Department of Health Services, speak  
17 directly to issues which have caused problems at other sites.  
18 Specifically, the requirement for waste solidification and  
19 other waste form requirements, as well as the regulation of  
20 long-term monitoring of the site, and a requirement that money  
21 be set aside to accomplish that, will ensure that the site  
22 operates safely even after it is closed and decommissioned.

23 Nevertheless, charges have been made that the  
24 disposers of low level radioactive waste, unlike the disposers  
25 of chemical hazardous wastes, will somehow no longer be  
26 liable for that waste, will be off the hook, once their waste  
27 is disposed of. This charge was first made by a gentleman  
28



1 employed by the United States Environmental Protection Agency  
2 at a meeting in Los Angeles last June, was picked up by the Los  
3 Angeles Times, and then picked up by the Controller, Gray  
4 Davis.

5  
6 We found out from a letter from the EPA in response  
7 to an inquiry that this gentleman has no responsibilities at  
8 EPA for low level waste disposal, and he's speaking as a  
9 private citizen, and that his views do not necessarily  
10 represent those of the Agency.

11 Furthermore, we have communicated to the Controller  
12 and others that the charge is incorrect; that under CERCLA,  
13 disposers of low level radioactive waste are indeed on the  
14 hook. There are four categories that CERCLA applies to. It  
15 does apply to low level waste facilities, and it applies to  
16 present owners and operators of the facility, past owners and  
17 operators, waste generators, and waste transporters.

18 One of the main points of this -- of this law, is  
19 that the State of California, as a disposer of waste through  
20 the University, through the State University system and other  
21 state agencies, is potentially liable in the unlikely event of  
22 some kind of accident at Beatty, Nevada, or Ridgeland,  
23 Washington. The State of California today is potentially  
24 liable. People have claimed that the State of California is  
25 liable at Ward Valley. You should understand that the state is  
26 currently liable in the unlikely event of an accident at those  
27 places.

28 So, the situation really doesn't change that much





1 in terms of liability, but the main point I want to underscore  
2 is that, yes, indeed, disposers of radioactive waste are  
3 potentially on the hook under federal law.  
4

5 The point we had -- we communicated to the  
6 Controller last summer, I did not ever get a response from him  
7 other than his staff, who felt that we were wrong, there is now  
8 a letter from the Chief Counsel of the Environmental Protection  
9 Agency to Administrator Riley confirming that yes, in fact,  
10 CERCLA does apply to low level radioactive waste disposal  
11 facilities.

12 So, we are in the same boat as disposers of any  
13 other kind of waste. In addition to all the other reasons that  
14 you have heard for wanting a safe disposal facility today, that  
15 is just one more.

16 On the subject of adjudicatory hearings, I sent a  
17 letter to the Chairman and Members on Monday, April 6, attached  
18 to which was a letter to me from our special counsel on the  
19 subject of adjudicatory hearings. If you've had a chance to  
20 look at it, you'd know that her conclusion, and she's a partner  
21 with the law firm of Graham and James in San Francisco, in  
22 their Environmental Law Department, her conclusion is that not  
23 only are adjudicatory hearings not required, but under state  
24 law, the Department of Health Services is not authorized to  
25 call for adjudicatory hearings.

26 I think it might be helpful in looking at the total  
27 picture to consider what has been done by way of public  
28 meetings and public input. And I would underscore that what



1 has been done is more appropriate to a technical issue, to a  
2 technical forum, than are adjudicatory hearings.

3 Now, I want to be cautious here, and I know that  
4 some of you are attorneys, and I don't want to offend anyone.

5 But it is my belief that the way the Department has  
6 gone about it, in a non-adjudicatory approach, is far more  
7 appropriate to the kinds of issues that are involved in  
8 siting, and developing, and operating a low level radioactive  
9 waste disposal facility.

10 First, public meetings were held in desert  
11 communities beginning in 1983 and '84. The license application  
12 was not filed until 1989. So, five or six years prior to the  
13 filing of the license application, the public was being  
14 informed, the public was getting information about this  
15 project.

16 I mention that partially because it's been 17 years  
17 since I appeared before this Committee. At that time, it was  
18 my confirmation, along with the other members of the original  
19 Energy Commission who had been appointed by Governor Jerry  
20 Brown. As you know, that Commission has a reputation for very  
21 open processes and open -- open hearings. But there is nothing  
22 in the Warren-Alquist Act, and there's nothing in Energy  
23 Commission practice, that calls for public hearings and public  
24 meetings four and five years in advance of the filing of a  
25 formal application. The Energy Commission's process does not  
26 begin until that application is filed.

27 Secondly, the selection of the site was undertaken  
28



1 with the assistance of a Citizen's Advisory Committee, composed  
2 of representatives of: the Boards of Supervisors of three  
3 counties -- Riverside, Inyo, and San Bernardino;  
4 representatives of the Leagues of Women Voter Chapters in each  
5 of those three counties; the Sierra Club; the Native American  
6 Heritage Commission; CAL RAD Forum had one seat on the  
7 Citizen's Advisory Committee. So, not only was this a matter  
8 of public information and communication, but of public  
9 involvement as well.

10 A third point that I urge you to keep in mind is  
11 that there was a hearing on the Final Environmental Impact  
12 Report. To my knowledge, that's unprecedented. Normally there  
13 are hearings on Draft Environmental Impact Reports. In this  
14 case, there were two hearings: there was a hearing both on the  
15 Draft Environmental Impact Report and the Final Environmental  
16 Impact Report.

17 That hearing -- the hearing on the Final was held  
18 last July, and the formal comment period closed August 5th.  
19 And it's my understanding that the Department -- one of the  
20 chores, and one of the reasons that the decision has been  
21 delayed is that they've been responding to the comments that  
22 came in on the Final Environmental Impact Report.

23 And finally, and not least, in cataloging the  
24 things that have been done that go beyond the requirements, and  
25 that should more than compensate -- for those of you who think  
26 that adjudicatory hearings are the right way to approach this,  
27 I would urge you to consider these items as more than  
28





1 compensating for that fact, setting the legal issue of the  
2 Department's lack of authority aside. In a couple of instances  
3 where tough technical issues came up, the Department  
4 established ad hoc committees that involved both local agencies  
5 and representatives of national federal agencies. One of those  
6 you've already heard referred to today, the Vado Zone  
7 Monitoring Committee that met in Sacramento for two full days  
8 last February to consider issues that had been raised --  
9 incorrectly, in our view, and correctly, admittedly, by those  
10 agencies eventually -- concerning the use and nonuse of liners.  
11 Liners are virtually prohibited by the NRC. What should the  
12 design of the monitoring system be. And at the outcome of  
13 those two days of meetings by experts, meetings open to the  
14 public, a revised monitoring system was devised.

15         So my point is that the process that has been used  
16 is the one appropriate to technical issues. It's been praised  
17 by the League of Women Voters on their comments on the Draft  
18 Environmental Impact Report.

19         With respect to adjudicatory hearings, I could say  
20 a lot of things. I could refer you to our counsel's paper,  
21 which you have. The view of the, obviously, of the Department  
22 of Health Services's own counsel against adjudicatory hearings,  
23 that it would have held up -- but I underscore this, and then  
24 I'll move on from that subject: three judges in the State of  
25 California have looked at the question of adjudicatory hearings  
26 in connection with material licenses, licenses for radioactive  
27 materials. In one case, this case.



1           The first was the case Desert Pass Action Group vs.  
2 the Department of Health Services, a case a few years ago  
3 involving the establishment by Westinghouse in Banning, in  
4 Riverside County, of a nuclear services facility. The  
5 Department did not require an adjudicatory hearing. They were  
6 taken to court, and both the trial court and the Court of  
7 Appeals determined that the Department was right, that an  
8 adjudicatory hearing was not required for that materials  
9 license.

10           And just this past December in this very case, the  
11 Redwood Alliance and others brought suit against the Department  
12 and asked for a temporary restraining order until their  
13 question on adjudicatory hearings could be heard. The request  
14 for a temporary restraining order was denied, and I understand  
15 there's a written opinion in that case, but the basis for the  
16 judge's denial was that the plaintiffs were unlikely to prevail  
17 on the merits.

18           So, this has been looked at, the very issue  
19 that seems to be before you today, has been looked at by the  
20 courts.

21           Finally, some have argued that since this issue,  
22 the issue of the constitutionality of the federal act, is  
23 before the United States Supreme Court, we should stop, wait,  
24 and see what it says.

25           I think that the point to keep in mind is that the  
26 court cannot provide disposal capacity. Whether the court  
27 upholds the federal act in its entirety, or as is likely,  
28



1 partially, or as is very unlikely, overturns it all, will not  
2 provide the State of California disposal capacity.

3 Just within the last few days, the Governor of  
4 Nevada has declared that if the act is overturned in its  
5 entirety, he will immediately close the Nevada facility. We  
6 can expect that the State of Washington and the State of South  
7 Carolina will do likewise. That's what they did in '79; that's  
8 how they got the federal act started in the first place.

9 It's hard to believe that this mandate has been  
10 before the states for 12 years, but that's -- that's where we  
11 are. The original deadline was 1986, when this Legislature  
12 responded in 1983 and declared, in the intent language of  
13 Senate Bill 342, that it wanted the expeditious establishment  
14 -- the expeditious establishment -- of a disposal facility. In  
15 '85, we were granted a reprieve of seven years. The deadline  
16 is now next January, and I don't think anyone really believes  
17 that the Congress is going to extend that deadline again. I  
18 don't think the three sited states would stand for it.

19 My expectation, and I'm not an attorney, but my  
20 expectation is that the court will sustain at least the compact  
21 structure. So, to come back to the issue of liability, you  
22 would have to look at what the Southwestern Compact says,  
23 Assembly Bill 1000, Assemblyman Peace, 1987, ratified by this  
24 Legislature, ratified by the Legislature of three other states,  
25 and granted consent by the Congress the following year, 1988.  
26 California as the host state is required to cause a regional  
27 disposal facility to be developed in a timely basis. That is  
28





1 our statutory obligation.

2           The only fair interpretation of "timely basis" is  
3 January 1, 1983 [sic]. So, whatever the court does with the  
4 1996 take title provision -- and many attorneys are betting  
5 they'll throw that out -- as long as the compact system is left  
6 in place, and it probably will be, California is faced with  
7 that statutory obligation. We don't want to see California  
8 default, or default beyond that date any longer than is now  
9 absolutely necessary.

10           I think the holding of an adjudicatory hearing will  
11 add time in addition to whatever litigation is going to come  
12 down.

13           CHAIRMAN ROBERTI: I appreciate your point, and it  
14 is a major point.

15           But there is an argument that the constitutional  
16 requirement is unconstitutional -- rather, the statutory  
17 requirement is unconstitutional.

18           DR. PASTERNAK: The statutory requirement for what,  
19 Senator?

20           CHAIRMAN ROBERTI: That the state has to provide  
21 for a disposal site.

22           DR. PASTERNAK: The challenge of New York is very  
23 broad.

24           CHAIRMAN ROBERTI: Which is a challenge that has  
25 been joined by our Attorney General as well.

26           DR. PASTERNAK: I -- I must respectfully differ.  
27 My understanding, and it's based on reading the brief  
28



1 of Ohio, which is the brief that New York -- the brief that  
2 California has joined, is that the focus of that attack is on  
3 take title, which is a 1996 provision.

4           What I'm saying is that if the court leaves in  
5 place the compact structure, our compact -- that cannot be  
6 challenged on the basis because it's a state law -- our  
7 compact requires California to cause a regional disposal  
8 facility to be developed by January 1, 1993.

9           You've already heard that our Governor has already  
10 heard from the Governor of Arizona, who has pointed to the  
11 potential liability that the State of California faces if it  
12 cannot provide disposal capacity for waste generators in this  
13 state. And I think, speaking for generators both in the other  
14 states of the Southwestern Compact as well as California, that  
15 is the view that we would take. That California, under the  
16 provisions of the Southwestern Compact, irrespective of taking  
17 title in '96, California has a statutory obligation to provide  
18 disposal capacity by this coming January.

19           I can only repeat what others have said, that the  
20 concerns that you have all expressed for safety weigh on the  
21 side of what the Legislature asked for in 1983: expeditious  
22 development of this disposal facility. That is the safest  
23 means, the safest means, of dealing with low level waste that  
24 is so important to our economy and our institutional life.

25           We urge you to consider and approve the  
26 confirmation of Russell Gould separate and apart from issues  
27 related to Ward Valley.  
28



1 CHAIRMAN ROBERTI: Thank you very much.

2 SENATOR MELLO: Mr. Chairman.

3 CHAIRMAN ROBERTI: Senator Mello.

4 SENATOR MELLO: I'll try to respond to your  
5 statement. You're suggesting that the U.S. Supreme Court will  
6 uphold the law, as I understood your statement.

7 DR. PASTERNAK: Most of it. I think they'll uphold  
8 most of it.

9 SENATOR MELLO: The action of the court on May  
10 30th, as listed in the New York Times of March 31st, which only  
11 a week ago, in two short sentences:

12 "The Supreme Court today gave a  
13 sympathetic hearing to a  
14 constitutional attack on federal  
15 law that requires states to take  
16 responsibility for disposing of  
17 their low level radioactive wastes  
18 within their borders. The argument  
19 and lawsuit brought by New York  
20 State against the federal government  
21 raised the possibility not only that  
22 the court might declare the 1985 law  
23 unconstitutional, but also that it  
24 could do so in a way that gives  
25 states new tools for resisting  
26 unwanted federal regulation."

27 DR. PASTERNAK: And that could be accomplished by  
28





1 striking down the take title provision.

2           SENATOR MELLO: But this differs from your  
3 statement that the court will uphold.

4           DR. PASTERNAK: Well, I think some of the  
5 statements -- the leading assumption in that article was that  
6 the states are now going to be required to take responsibility.  
7 This has always been a state responsibility, disposal of low  
8 level waste. The sites that are operating in Washington,  
9 Nevada and South Carolina are operated by private entities  
10 under state regulation. That won't change.

11           SENATOR MELLO: But they're referring to a 1985  
12 law.

13           DR. PASTERNAK: Pardon?

14           SENATOR MELLO: If the U.S. Supreme Court overturns  
15 a 1985 federal law, then we're back to where we are right now,  
16 that the states can contract with other states for disposal of  
17 their low level radioactive waste.

18           DR. PASTERNAK: No, I think, Senator, that what  
19 will happen, if the entire law is overturned, I think the three  
20 sited states will do just what they did in 1979 and '80 to kick  
21 all this off: they will shut their sites down, to themselves  
22 as well as everybody else. They will provoke a new crisis.

23           And as I say, my bet is that the court will -- if  
24 it's going to strike anything down, it will strike down the  
25 1996 take title provision, which means the states have to take  
26 title. But I think they will leave the compact system in  
27 place, because the compact system is a carrot and a stick for  
28



1 the states to develop their own facilities.

2 And then you have to look to the provisions of our  
3 Southwestern Compact, which were approved by this Legislature,  
4 which requires California, quote: "To cause a regional  
5 disposal facility to be developed on a timely basis." That is  
6 now both state and federal law.

7 SENATOR MELLO: I think the New York Times differs  
8 with your statement quite a bit, so I just wanted to point that  
9 tout.

10 DR. PASTERNAK: I've probably been following this  
11 longer than the reporter for the New York Times.

12 CHAIRMAN ROBERTI: Thank you, Senator.

13 Thank you very much.

14 DR. PASTERNAK: Thank you, Senator.

15 CHAIRMAN ROBERTI: Next witness, please.

16 No more? How can that be?

17 Ms. Gluckstein, who testified three weeks ago,  
18 would like to have an opportunity to rebut some of the  
19 observations.

20 That is fine with me, but it's really the decision  
21 of the Committee. Maybe two minutes for Ms. Gluckstein, and  
22 then Mr. Gould can make his final response.

23 Is there any objection to that?

24 SENATOR MELLO: In fact, Mr. Chairman, I think  
25 we've heard today from all the proponents, and we heard mainly  
26 from the opponents the time before.

27 But I think there are some people here that would  
28



1 like to testify, ,and we should just set a short period of time  
2 so that Ms. Gluckstein and maybe --

3 CHAIRMAN ROBERTI: Let's say one person to be given  
4 an opportunity to refresh our memories on the issues, but there  
5 comes a point, I think, when all has been said, has been said.

6 So, Ms. Gluckstein, I think, was the lead witness  
7 three weeks ago.

8 Unless you have somebody else --

9 SENATOR CRAVEN: Is there a time limit?

10 CHAIRMAN ROBERTI: I would say three minutes for  
11 Ms. Gluckstein.

12 MS. GLUCKSTEIN: Chairman Roberti, I would  
13 actually like to introduce our expert witness --

14 CHAIRMAN ROBERTI: Please do that, yes.

15 MS. GLUCKSTEIN: -- Dan Hirsch, and I would also  
16 like to say on behalf of the numerous organizations that I  
17 represent -- the Hollywood Women's Political Committee, Women  
18 For, National Council of Jewish Women, Physicians for Social  
19 Responsibility, et cetera -- we would like to introduce Dan  
20 Hirsch.

21 CHAIRMAN ROBERTI: Thank you, Ms. Gluckstein.

22 Mr. Hirsch.

23 MR. HIRSCH: I obviously cannot in a couple of  
24 minutes rebut what was said over many, many hours, and I think  
25 that is perhaps the fundamental message that needs to be gotten  
26 across.

27 I suspect that you, after hours of hearing the  
28





1 testimony, are somewhat confused about the facts of the site.  
2 Does it connect to the Colorado River? You've heard one  
3 witness say it doesn't. I have a U.S. Geological Survey that  
4 say it drains to the Colorado River, is an open basin.  
5

6 You've heard them say that the tritium migration  
7 can be explained; it's not a problem. We have in the audience  
8 with us Dr. Robert Cornog, who, in 1939, with the Nobel  
9 Laureate Louis Alvarez, discovered tritium. And he and a  
10 number of our other colleagues are concerned about that tritium  
11 finding and believe it could represent a very serious, very  
12 serious indication of hazard at the site.

13 I don't believe that these complicated issues are  
14 ones which have been resolved to date, and I don't believe that  
15 it would be morally appropriate for us to go forward with this  
16 project until those issues are resolved.

17 Now, you've heard it said that this is an issue  
18 being brought to your attention at the very last moment, that  
19 where were these people earlier.

20 I want you to understand, the reason you're stuck  
21 with this difficult choice is because we, over several years,  
22 have repeatedly asked for adjudicatory hearings. My first  
23 request was two years ago. I got no response. I submitted  
24 additional requests, got no response. Asked them where I could  
25 find the procedures, was given a run-around. There must be  
26 half a dozen at least exchanges of correspondence formally  
27 requesting a hearing, and that's been denied.

28 So, you're stuck in the situation where you have to



1 be making a decision whether DHS's failure to provide a full  
2 hearing beforehand, whether their failure should be rewarded in  
3 a way that permits them to go forward with a potentially unsafe  
4 facility.

5 I want to give you two anecdotes about the  
6 potential alternative as to what we face. And one is from Los  
7 Angeles, and one is from your district, San Luis Obispo.

8 In Los Angeles some years ago, the Department of  
9 Water and Power wanted to build a nuclear reactor in a place in  
10 Malibu called Corral Canyon. And Bob Hope, the most -- least  
11 likely anti-nuclear person you can imagine, intervened, and he was  
12 as able to hire very good technical people who were concerned  
13 that there was an earthquake fault beneath the site. Those  
14 people testified in an adjudicatory hearing; the other side  
15 said, "No, it can't possibly be so," just the way you've heard  
16 all day, those claims. The adjudicatory board said, "Well,  
17 this is serious. We'd better find out," and ordered them to go  
18 out and do some trenching to find out if there were faults  
19 there. In the midst of the hearing, they found, yes, indeed,  
20 there were faults, and the project was abandoned.

21 On the other side of it is Diablo Canyon. In 1968,  
22 there was a hearing, a truncated hearing. The intervenors said  
23 that they wanted to put on witnesses to show that there was an  
24 off-shore fault. That was prohibited by the hearing officer,  
25 opposed by the counsel for the applicant. They got the license  
26 without any testimony on off-shore faults. A few years later,  
27 we discovered there was such a fault, and it took billions of  
28



1 dollars, as you say, of retrofitting.

2 Now, those are two choices. There's a third  
3 choice: to go forward with a project like Ward Valley, where  
4 there are eminent experts on the other side who believe there  
5 are serious unresolved questions, and to have no adjudicatory  
6 hearing at all, no discovery, no opportunity for cross  
7 examination, no decision on the record. And what may happen if  
8 we do that is an environmental disaster later that, frankly, it  
9 is the responsibility of DHS to have done this right. They  
10 have not done it right. And right now, the responsibility is  
11 in your hands.

12 You have to weigh the arguments made, and most of  
13 them, I feel, are quite inflammatory about wholesale migration  
14 out of the state if a dump doesn't open. I must remind you  
15 that in 1980, the bill was first written. They had to come up  
16 with a dump by 1985. No one did. The Act was rewritten then.

17 It is -- there are 39 states required to come up  
18 with these compact dump sites. We are farther ahead than any  
19 of them. It's incomprehensible that 80 percent of the  
20 country's medicine is going to shut down.

21 CHAIRMAN ROBERTI: Thank you, Mr. Hirsch.

22 MR. HIRSCH: If I could -- one last comment, if I  
23 may.

24 Camus once said that what is expected of people of  
25 conscience is they speak out loud and clear so that not a  
26 doubt, not the slightest doubt, can rise in the heart of the  
27 simplest person.  
28





1           That's what I ask you to do: to speak out loud and  
2 clear that we need to follow a process that safeguards future  
3 generations, that we don't make a mistake that others live to  
4 regret.

5           Thank you.

6           CHAIRMAN ROBERTI: Mr. Gould said something earlier  
7 in the hearing, and that is, you said you would agree to an  
8 adjudicatory hearing. You just didn't want an interminable  
9 one.

10           So, I'm trying to figure out if we are approaching  
11 a meeting of the minds here or not.

12           I guess an adjudicatory hearing does mean an  
13 adjudicatory hearing. Are you suggesting that maybe we limit  
14 the number of parties?

15           MR. GOULD: Yeah, Senator. I think those are some  
16 of the features that can help put some control on the process  
17 so we can get a full exploration of the issues without having  
18 it be, as you call it, an interminable process.

19           And I think Senator Mello referred to the same  
20 thing. There may be a way to limit some of the number of  
21 participants.

22           We do think that a process with an administrative  
23 law judge presiding, with cross examination, but with some  
24 limitation on the number of participating parties so that we  
25 have some control of the process in terms of its, you know,  
26 willingness to explore all the issues, but not interminable, is  
27 appropriate.  
28



1 CHAIRMAN ROBERTI: Maybe Mr. Hirsch, why don't you  
2 come on up again.

3 SENATOR PETRIS: I have a question or two when you  
4 finish.

5 CHAIRMAN ROBERTI: Right.

6 If we could work out an adjudicatory hearing in  
7 which the number of parties were consolidated --

8 MR. HIRSCH: That's not a problem. In fact, that's  
9 the NRC procedure.

10 You have parties submit applications. And if they  
11 meet the criteria, they're accepted, and there is  
12 consolidation.

13 CHAIRMAN ROBERTI: I think the Administration does  
14 make a good case to this extent, that if they prove their case,  
15 they shouldn't have to fight it out with a succession of  
16 interminable groups that will come out.

17 MR. HIRSCH: There's a limited number of resources  
18 available for the groups anyway. It's likely there will be a  
19 consolidation of those groups. This is standard practice.  
20 That's a non-issue.

21 CHAIRMAN ROBERTI: My suggestion is that between --  
22 and Senator Petris is going to make some remarks, too -- but my  
23 suggestion is that between now and before we adjourn tomorrow  
24 afternoon or morning, that we try to work out some adjudicatory  
25 process which does put some kind of limitations on the number  
26 of parties that can be heard, so that the process is, at least  
27 time-wise, efficient.  
28



1           None of us here want to vote against Mr. Gould. In  
2 all the discussion about Ward Valley, we have to also take into  
3 consideration the long list of people in the health field who  
4 are here, whose clients and concerns we also have an obligation  
5 to, and I'm not saying that Ward Valley isn't a health issue,  
6 but people know what I mean, and who feel that Mr. Gould is  
7 going to be an outstanding Secretary.

8           At the same time, radioactive waste disposal is one  
9 for the ages.

10           So, my suggestion is we try to work something out,  
11 because we want to vote for you.

12           Senator Petris.

13           SENATOR PETRIS: Well, I'd like to see us do that,  
14 too, providing we get a good hearing. We could have some  
15 constraints.

16           But I was going to ask if you have with you a  
17 medical expert who can answer. I mean, some of this testimony  
18 scared the daylights out of me.

19           I'd like to get -- if there's another side to  
20 policies, procedures, facts, without taking too long, Mr.  
21 Chairman, I think we ought to hear it, and I would ask that the  
22 points that have been made should be answered. If not all of  
23 them, certainly the substantial ones.

24           Can you call somebody to do that?

25           MR. HIRSCH: I can try, and perhaps my colleague,  
26 Dr. Cornog, can join me.

27           I know you don't want to take much time, and in the  
28





1 three minutes I had, it was very difficult to respond to all of  
2 that.

3  
4 Why don't I try now, and we'll see if others can  
5 help me.

6 CHAIRMAN ROBERTI: Is that Dr. Cornog?

7 MR. HIRSCH: Yes.

8 CHAIRMAN ROBERTI: Please come forward, Doctor.

9 MR. HIRSCH: To begin, we must have a sense of the  
10 scope of the problem. The medical wastes represent by activity  
11 about one-tenth of one percent of what is to go to Ward Valley,  
12 with the exception of two companies who should be recapturing  
13 their material and re-using it. With those exceptions, the  
14 bulk of the wastes are nuclear power plant wastes, long-life  
15 material, very much of a different order of magnitude.

16 If the waste dump were designed for the medical  
17 community, that one-tenth of one percent, you wouldn't be  
18 having this hearing. All the people came to tell you about why  
19 they want to have some kind of disposal facility, none of us  
20 oppose that.

21 Our concern is these huge quantities of reactor  
22 wastes that are long-lived, and also this large quantity of  
23 tritium from these two companies that should be recaptured.

24 Secondly, it is true that there are nonradioactive  
25 alternatives for some uses. It's also true that there remain  
26 needs for radioactive uses in medicine and science. This is  
27 quite true. The amounts are very small compared to the overall  
28 waste stream.



1           What else particularly was --

2           SENATOR PETRIS: Well, on the medical side, there's  
3 the problem of storage of the waste from the hospitals and the  
4 private companies that are doing the manufacturing and  
5 research, which necessitate the use of these materials.  
6 Without our action, there will be a large number of storage  
7 centers springing up in urban areas that will be very unsafe.

8           MR. HIRSCH: I thought that was a rather  
9 disingenuous argument.

10           There are radioactive materials stored at those  
11 sties today, this moment. They store them for use. They use  
12 them, and they store them as waste before they ship them out.

13           We've been told repeatedly that that is safe.  
14 They're now telling you that if they have to store it for three  
15 months, and moving that up to a year or a year and a half for  
16 an adjudicatory hearing, that that produces some unique safety  
17 hazard.

18           If it's safe at present, it would be safe to extend  
19 that period for just a few additional months. I think that's  
20 quite a red herring.

21           In addition, the state has begun to make  
22 arrangements about temporary storage in the interim while the  
23 process remains at a couple of trans-shipment points.

24           So again, it's -- everytime someone is worried  
25 about a health and safety regulation, they come to you and tell  
26 you they will migrate out of the state if you put it into  
27 effect. And I think at some point, one has to really say that  
28



1 there is an ethical issue involved, and one shouldn't be making  
2 these kind of fantastic claims.

3 As I say, the entire country is under an obligation  
4 to come up with these dump sites, and we are farther ahead than  
5 everyone. So, it's just incomprehensible that --

6 SENATOR PETRIS: Are the other, those 39 states,  
7 operating under the same time requirement that we are?

8 MR. HIRSCH: Yes, yes, and they're way behind us.  
9 They're years behind us.

10 SENATOR PETRIS: Years behind?

11 MR. HIRSCH: Yeah, almost all of them years behind  
12 us.

13 So, what's going to happen next year is what  
14 happened in '85. They will find that no one has met the  
15 deadline. This summer, the Act will probably be declared in  
16 part unconstitutional, and the nation will have to re-assess  
17 the policy of radioactive waste disposal then, and hopefully, a  
18 more creative solution will occur than forcing it on the states  
19 and mixing these huge power reactor wastes with these tiny  
20 medical wastes.

21 SENATOR PETRIS: You think those are two separate  
22 things in scope.

23 MR. HIRSCH: It is quite clear that there are a few  
24 isotopes that cross over, but there are very simple creative  
25 solutions for those that slip over.

26 I, frankly, think that if the biomedical community  
27 were primarily concerned about disposal of their wastes, they'd  
28





1 be working with us on solutions which we believe exist for  
2 their waste. And I think the hang-up is these huge amounts of  
3 power plant wastes which are a different order of magnitude of  
4 risk.

5 SENATOR PETRIS: That's your first concern?

6 MR. HIRSCH: Again, Cedars Sinai testified here  
7 they produced two curies of radioactive waste over the last  
8 four years. During this same period, San Onofre produced 6,000  
9 curies. The wastes that were produced from Cedars Sinai by and  
10 large were of less toxicity than the wastes, even curie for  
11 curie, than the wastes from San Onofre.

12 No one here is upset about Cedars Sinai's waste, or  
13 Gen-Probe, or any of the others that testified. Their fear is  
14 dumping huge quantities of reactor wastes that are plutonium --  
15 24,000-year half life; strontium and cesium with 30-year half  
16 lives, meaning hazardous for about 600 years, in unlined pits  
17 with -- by the way, a lot of disingenuous arguments about why  
18 liners aren't necessary -- in a place where there are data  
19 suggesting that migration rate may be quite rapid down to  
20 groundwater.

21 If indeed --

22 SENATOR PETRIS: Not 17,000 years?

23 MR. HIRSCH: That's why the tritium findings are so  
24 important. They claim that it will take thousands to tens of  
25 thousands of years for the radioactive material to migrate to  
26 600 feet to groundwater.

27 The Regional Water Quality Control Board and the  
28



1 U.S. EPA said, "Hold it. You've already found tritium  
2 migration 100 feet, and those data suggest that it is migrating  
3 at rates of years or decades, not thousands of years. Explain  
4 this contradiction."

5 And that contradiction has not been resolved.

6 The contractor for U.S. Ecology has acclaimed,  
7 "Don't worry. It's gas phased diffusion," which we think  
8 doesn't help them very much. It's obviously still moving fast.

9 But we also believe that that's not a proven --  
10 that's not proven at all.

11 So, you have them having a model saying 10,000  
12 years, and data saying a few years. And if the model's right,  
13 it's safe. And if the data are right, it's dangerous. And you  
14 aren't going to know without an adjudicatory hearing.

15 Bob, maybe you want to add something on that?

16 DR. CORNOG: No, I think you expressed it well.

17 SENATOR PETRIS: Well, Doctor, did you have any  
18 comments on any other part of the medical?

19 DR. CORNOG: I would like to emphasize two things.  
20 That the magnitude of the waste from the power plants and so on  
21 is thousands of times more lethal, more amounts, than that from  
22 the medical community.

23 And I think that the attempt, apparent attempt, to  
24 link the medical dangers with those of the power plant dangers  
25 can be confusing at times.

26 SENATOR PETRIS: Thank you.

27 MR. HIRSCH: Is there anything else we could help  
28



1 clarify?

2  
3 SENATOR PETRIS: Yeah, I had two or three other  
4 questions, but they've escaped me. They're mostly on the  
5 medical part: medical research grinding to a halt.

6 MR. HIRSCH: Let me tell you --

7 SENATOR PETRIS: With all these people dying, the  
8 AIDS patients. Of course, they're dying anyway, but we don't  
9 want it to be any faster than we can prevent it from being.

10 MR. HIRSCH: Two points.

11 One is that I've been, and you have been, through  
12 situations, too. I've been through all these nuclear power  
13 hearings, where the utilities come in and say, "If we have  
14 hearings and have to deal with these safety issues, we'll never  
15 get these plants built, and so there'll be blackouts all over  
16 parts of the country."

17 And they hold the hearings. They find safety  
18 problems, and they resolve the safety problems, and no  
19 blackouts.

20 So, we've heard these claims over and over and over  
21 again.

22 SENATOR PETRIS: We have, too.

23 MR. HIRSCH: Even if it were true, which I do not  
24 believe it's true. I don't believe this will affect medical  
25 care in the State of California in January of '93 in any  
26 fashion or in any of those other 38 states. I -- that's just  
27 not in the cards.

28 No one is complying with that law. They're all way





1 behind us, for good reason.

2           SENATOR PETRIS: That the January '93 deadline  
3 applies to the other 39 states?

4           MR. HIRSCH: Quite right.

5           SENATOR PETRIS: And a few years behind us, they  
6 ain't gonna make it.

7           MR. HIRSCH: We can't make it even if they gave the  
8 license today. So, no state is going to meet the deadline.

9           SENATOR PETRIS: What happens when the deadline  
10 arrives?

11           MR. HIRSCH: What happens is, the Act is re-opened,  
12 and those dump sites that are currently in existence continue  
13 to receive wastes until some kind of reasonable settlement is  
14 resolved. For example, there is an adjudicatory hearing here  
15 that determines whether the site is safe or not.

16           It's what happened in '85. It already has  
17 happened. It will happen again.

18           And there may well be, come summer, a finding a  
19 unconstitutionality.

20           But the second point I want to make is really  
21 critical. You're dealing with two kinds of risks to public  
22 health. Claims, which I do not believe are correct, that on --  
23 that they'll have to do a little bit of increased storage, and  
24 that that may impact research. I don't believe it's correct,  
25 but even if it were for a moment, I want you to weigh that  
26 against the health risks of going ahead with the project,  
27 dumping huge quantities of extremely toxic, long-lived  
28



1 materials above a pristine aquifer close to the Colorado River.

2 You have to weigh one set of health risks against  
3 another, and in the end, do something that is just.

4 SENATOR PETRIS: That geological report to which  
5 you referred, which year was that published?

6 MR. HIRSCH: In 1984, and it says that Ward Valley  
7 is an open basin which drains to the Colorado River. I will  
8 give you a copy.

9 Thank you.

10 CHAIRMAN ROBERTI: Senator Craven was signaling me  
11 that he thinks time is up.

12 SENATOR CRAVEN: You should be thankful I'm not  
13 asking to speak.

14 [Laughter.]

15 CHAIRMAN ROBERTI: We'd all like to hear you,  
16 Senator.

17 CHAIRMAN ROBERTI: Mr. Gould, would you like to  
18 conclude?

19 MR. GOULD: Senators, we have spent some 13 hours  
20 together, and I think you know me. We have had an opportunity  
21 to work together on a variety of issues, and my experience  
22 within the Department of Finance, the State Treasurer's Office,  
23 and now in the Health and Welfare Agency.

24 When you look at Ward Valley, this is one issue,  
25 and I recognize it's a very important issue. There are  
26 hundreds of critical issues that we're going to be facing over  
27 the next couple of years.  
28



1 I came to this position with the commitment to do a  
2 good job for the Governor, who asked me to serve in this  
3 position, and for the people of California, because I think  
4 it's important, and I wanted to contribute.

5 I still believe that's the case.

6 We face some incredible challenges. The fiscal  
7 situation and the kinds of choices we're going to be having to  
8 make within the Health and Welfare programs over the next  
9 couple of years are very difficult. You know that; you're  
10 exploring the same kinds of choices and having the same  
11 dilemmas as the Administration is having. I want to be part of  
12 that process.

13 And I think we've been responsive, and the Governor  
14 has indicated a willingness to work with you in terms of making  
15 sure that people are well educated, and that we have a good  
16 understanding before we move forward on the licensing of a  
17 facility for low level radioactive waste. This is not  
18 insignificant. This is the same reason why Molly Coye, the  
19 Director of Health Services, and I have not moved forward to  
20 this point. We wanted to make sure we were absolutely  
21 satisfied before we're prepared to move.

22 I think I've been pretty clear about a willingness  
23 to work with you, and I guess that concludes my comments.

24 CHAIRMAN ROBERTI: Thank you, Mr. Gould.

25 We want to vote for you. We also would like to  
26 have an adjudicatory hearing as part of the process.

27 And as I indicated to the Governor, we do not tie  
28





1 in one issue, because you make a very strong point. This Ward  
2 Valley, let's say it over again, it's radioactive waste  
3 disposal. As one of the witnesses said three weeks ago, 20  
4 miles from the Colorado River. And those hearings that took  
5 place, and they were sort of localized, and that's very  
6 important because they're going to bear the brunt of living in  
7 proximity. But still, for all the rest of us, we're concerned  
8 very much.

9  
10 So, I would hope that over the evening we can work  
11 out what is an adjudicatory hearing, but at the same time,  
12 defer to the Administration's legitimate wish that the hearing  
13 is not an interminable process where, after all the groups seem  
14 to have been heard, there are more groups to be heard. Because  
15 I recognize the need that we have to find a place, and I  
16 sympathize with the concerns that some of the directors of the  
17 various agencies of the various hospitals, that it's sort of  
18 like having, you know, better if you only have two nations with  
19 A-bombs rather than 37 nations spreading them all around  
20 because somebody may make a mistake. The same thing can happen  
21 with the disposal of radioactive waste.

22 But I would hope we could work out an adjudicatory  
23 process, not take a vote tonight. Tomorrow is another day. We  
24 can withdraw the nomination. We could actually have a hearing  
25 tomorrow, or we can withdraw the nomination from Rules because  
26 I think you may have the all-time record for a hearing, at  
27 least as far as I can remember.

28 MR. GOULD: It's not a record I was looking forward



1 to.

2 CHAIRMAN ROBERTI: I know.

3 SENATOR PETRIS: It's not quite the all-time  
4 record.

5 CHAIRMAN ROBERTI: It isn't? Mr. Thrasher?

6 SENATOR PETRIS: No, a long time ago, before --

7 CHAIRMAN ROBERTI: Probably Mr. Procunier, and  
8 that's before I was around, yes.

9 SENATOR PETRIS: Around World War I, I was on this  
10 Committee.

11 [Laughter.]

12 SENATOR PETRIS: We had Mr. Procunier.

13 CHAIRMAN ROBERTI: That's right.

14 I think this was my all-time record. I thought  
15 General Thrasher was, but I think it's Mr. Gould now.

16 SENATOR PETRIS: And I might point out that that  
17 confirmation was denied. I led the fight. The person who  
18 appointed him was a Democratic President, so there's --

19 CHAIRMAN ROBERTI: Presidential candidate.

20 SENATOR PETRIS: Right, a Democratic Governor.

21 [Laughter.]

22 SENATOR PETRIS: So, the issue is not because the  
23 Governor happens to be this particular Governor. That's not  
24 the issue at all.

25 CHAIRMAN ROBERTI: Senator Mello.

26 SENATOR MELLO: I'd like to try a motion, I think,  
27 that incorporates the Chairman's thought. And that is as  
28



1 following:

2           The confirmation of Mr. Gould be held in the Rules  
3 Committee, but we would empower the Chairman to withdraw his  
4 nomination tomorrow from the Rules Committee to put it on the  
5 Floor for action. But between now and tomorrow, Mr. Gould and  
6 his designated associates, along with Mr. Dan Hirsch and a  
7 designated attorney, sit down and try to draft a document that  
8 would be presented to Senator Roberti tomorrow that would  
9 include the adjudicatory hearing procedure, limiting the  
10 participants on each side. Work out some arrangement that both  
11 sides agree to, but it includes that discovery be allowed so  
12 that the files could be opened to, as is the case in that type  
13 of hearing, cross examination and the rules of evidence be  
14 incorporated in the hearing.

15           SENATOR PETRIS: Excuse me.

16           Can we add to that our very tired Legislative  
17 Counsel to be helpful in the language?

18           CHAIRMAN ROBERTI: Because definitely we're going  
19 to need help.

20           SENATOR MELLO: Yes. Legislative Counsel be  
21 available also to help serve to the Legislature's counsel.

22           I think is that could be satisfied to the -- that  
23 the Chairman be satisfied and Members of the Rules Committee, I  
24 certainly would be supporting that and supporting his  
25 confirmation tomorrow, which I all along hoped to do.

26           But following short of this procedure of the  
27 hearing process, it would make it difficult, I think, for many  
28





1 of us to do that.

2           So, my motion, I believe I outlined it. It be held  
3 in Committee, but we empower the Chairman to withdraw his  
4 nomination from the Committee, bring it to the Floor upon the  
5 availability of a document to be drafted by him in cooperation  
6 with Mr. Dan Hirsch and his designated attorney, and the  
7 availability of Leg. Counsel, that would include the items that  
8 I set forth.

9           CHAIRMAN ROBERTI: There's Senator Mello's lengthy  
10 motion before --

11           SENATOR MELLO: I'm sorry it's lengthy, but it's --

12           CHAIRMAN ROBERTI: No, you had no choice. I wasn't  
13 being sarcastic, Senator.

14           Senator Mello's motion is before the Committee. On  
15 the motion.

16           SENATOR BEVERLY: It's a long paragraph, or  
17 sentence, or whatever it was.

18           I think the sense of it is agreeable, but I think  
19 we're leaving it all up to the Chairman of the Rules Committee.

20           CHAIRMAN ROBERTI: No, you're not. You can be sure  
21 I'm going to consult. I don't want to be responsible for this  
22 one all by myself.

23           SENATOR BEVERLY: If this group does not come to a  
24 meeting of the minds, what happens? We need some assurance  
25 that the Committee will meet again.

26           CHAIRMAN ROBERTI: Then this Committee would  
27 reconvene if it's necessary. Yes, absolutely.  
28



1           SENATOR BEVERLY: You'll either bring it to the  
2 Floor, or --

3           CHAIRMAN ROBERTI: No, this is an informal addendum  
4 to Senator Mello's motion.

5           But if everybody seems to be in agreement, I'll  
6 just move to withdraw.

7           If we're at loggerheads, then we have to meet  
8 again.

9           SENATOR BEVERLY: With that assurance --

10          SENATOR MELLO: My motion did include delivery to  
11 the Chairman, because he's our Chairman.

12          CHAIRMAN ROBERTI: Yes, absolutely.

13          SENATOR MELLO: But that would be shared with each  
14 Member of the Rules Committee for your own evaluation.

15          CHAIRMAN ROBERTI: So, that motion is before us.

16          Secretary will call the roll.

17          SECRETARY WEBB: Senator Beverly.

18          SENATOR BEVERLY: Aye.

19          SECRETARY WEBB: Beverly Aye.

20          Senator Mello.

21          SENATOR MELLO: Aye.

22          SECRETARY WEBB: Mello Aye.

23          Senator Petris.

24          SENATOR PETRIS: Aye.

25          SECRETARY WEBB: Petris Aye.

26          Senator Craven.

27          SENATOR CRAVEN: Aye.

28



1 SECRETARY WEBB: Craven Aye.

2 Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 SECRETARY WEBB: Roberti Aye.

5 CHAIRMAN ROBERTI: The vote is five to nothing; the  
6 motion carries.

7 We'll see everybody tomorrow. Thank you, Mr.  
8 Gould.

9 I think we're going to break for five minutes, then  
10 we will take up Ms. Azevdo as Member of the Unemployment  
11 Insurance Appeals Board, and Manuel Guaderrama, Member of the  
12 Board of Prison Terms.

13 And then I would suggest we call it an evening.

14 [Thereupon a brief recess was taken.]

15 CHAIRMAN ROBERTI: Ms. Azvedo, I think you're going  
16 to be lucky because it's so late.

17 Please tell us why you feel you're qualified to  
18 assume this position.

19 MS. AZVEDO: I bring to the California  
20 Unemployment Insurance Appeals Board many years of business and  
21 management experience, which taught me how to meet a payroll,  
22 maintain a cost-effective budget, handle personnel problems,  
23 and successfully supervise employees.

24 In my capacity as Chairman for the Federal Council  
25 on Aging, I have served the Administration on Aging numerous  
26 times as a reviewer for government grant applications. I have  
27 Chaired the Federal Council on Aging for the last six years,  
28





1 and have represented the elderly of this nation at conferences  
2 and forums across the nation, both as a speaker and visible  
3 advocate.

4 I became a member of the California Unemployment  
5 Appeals Board in July of last year, and since then I've had the  
6 opportunity to become familiar with the Agency, fellow board  
7 members, judges, and staff. I have tried to become  
8 knowledgeable and effective, and have given it my best effort  
9 to be thorough, compassionate, and fair.

10 I have been fortunate to have insight and  
11 inexperience into the political system, and as an American by  
12 choice, I have learned to appreciate the many privileges and  
13 responsibilities granted to me as a citizen of this great  
14 nation.

15 I would also like to introduce to you my Chief  
16 Counsel for the Board, Mr. Tim McArdle, my company for the  
17 evening.

18 CHAIRMAN ROBERTI: Are there any questions of  
19 Ms. Azvedo? Is there any opposition in the audience?

20 SENATOR CRAVEN: Move Ms. Azvedo's confirmation.

21 CHAIRMAN ROBERTI: Senator Craven moves  
22 Ms. Azvedo's confirmation be recommended to the Floor.

23 SENATOR MELLO: Mr. Chairman, I just want to add  
24 for the record that --

25 CHAIRMAN ROBERTI: Senator Petris is waiting,  
26 Senator Mello.

27 SENATOR MELLO: I'm sorry.  
28



1           Usually we're here -- finally we have a group from  
2 an ethnic group that I'm proud to support, and her husband is  
3 here in the audience.

4           But I want to just for the record say that Art  
5 Agnos, the former Mayor of San Francisco and former Member of  
6 the Assembly, called me out of a meeting, very excited, to tell  
7 me how much he wanted to be very supportive of Ms. Azvedo.

8           So, I just wanted to indicate that to her and to  
9 the record.

10          SENATOR BEVERLY: Maybe we'd better review it a  
11 little further.

12                               [Laughter.]

13          SENATOR PETRIS: He called me, too, Mr. Chairman.

14          CHAIRMAN ROBERTI: Senator Craven's motion is  
15 before us.

16          Secretary will call the roll.

17          SECRETARY WEBB: Senator Beverly.

18          SENATOR BEVERLY: Aye.

19          SECRETARY WEBB: Beverly Aye.

20          Senator Mello.

21          SENATOR MELLO: Aye.

22          SECRETARY WEBB: Mello Aye.

23          Senator Petris.

24          SENATOR PETRIS: Aye.

25          SECRETARY WEBB: Petris Aye.

26          Senator Craven.

27          SENATOR CRAVEN: Aye.  
28



1 SECRETARY WEBB: Craven Aye.

2 Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 SECRETARY WEBB: Roberti Aye.

5 CHAIRMAN ROBERTI: The vote is five to zero;  
6 confirmation is recommended to the Floor.

7 MS. AZVEDO: Thank you very much, Mr. Chairman,  
8 Senators. It's been a long evening, and I appreciate it.

9 CHAIRMAN ROBERTI: Thank you.

10 Manuel Guaderrama, Member of teh Board of Prison  
11 Terms.

12 MR. GUADERRAMA: I am the last witness.

13 CHAIRMAN ROBERTI: Mr. Guaderrama, we will ask you  
14 the same question, why do you feel you're qualified to assume  
15 this position?

16 MR. GUADERRAMA: Thank you.

17 When I was appointed to the Board of Prison Terms,  
18 I was Deputy Police Chief of the City of San Diego. I was in  
19 charge of Field Operations. I had had 30 years on the Police  
20 Department, working nearly every capacity, every unit, of the  
21 Department. I worked my way up from a patrol officer to Deputy  
22 Chief in charge of Field Operations, which was being in charge  
23 of patrol and investigative forces throughout the city.

24 I have served on numerous boards and commissions,  
25 including a number of citizens' groups. Just until recently, I  
26 was on the Board of Directors of Boy Scouts; I was on the  
27 Board of Directors of Urban League of San Diego. I was on the  
28





1 Advisory Board of the Job Corps. I was on the Board of  
2 Directors of United Way. I was a Commissioner on the Juvenile  
3 Justice Commission. I was on the Board of Directors of the  
4 National Council on Alcoholism, and there were others.

5 In 1987, I was appointed to the Advisory Board for  
6 Donovan State Prison in San Diego County, and during my --  
7 after my first year, I was appointed Chairman of that  
8 committee, and I served there until I was appointed to the  
9 Board of Prison Terms. And during that time, it really piqued  
10 my interest in Corrections, and I was amazed by the enormity of  
11 the system, prison system.

12 My education includes an Associate of Arts Degree  
13 in Police Science, a Bachelor of Arts Degree in Criminal  
14 Justice Administration. I have a Master's Degree in Human  
15 Relations -- Human Behavior.

16 Additionally, I'm a graduate of the FBI National  
17 Academy, the Senior Management Institute in Boston College, and  
18 a graduate of LEAD San Diego, that's an issues-oriented  
19 leadership program.

20 And that pretty much is a summary of my background.  
21 I think that my experience and my background and my education  
22 will help me be successful as a Commissioner on the Board of  
23 Prison Terms.

24 CHAIRMAN ROBERTI: Thank you very much,  
25 Mr. Guaderrama.

26 SENATOR CRAVEN: Move.

27 CHAIRMAN ROBERTI: Senator Craven moves that  
28



1 Mr. Guaderrama's confirmation be recommended to the Floor.

2 Is there any further discussion or debate? Is  
3 there any opposition?

4 Hearing none, Secretary will call the roll.

5 SECRETARY WEBB: Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye.

8 Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Mello Aye.

11 Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye.

14 Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Craven Aye.

17 Senator Roberti.

18 CHAIRMAN ROBERTI: Aye.

19 SECRETARY WEBB: Roberti Aye.

20 CHAIRMAN ROBERTI: The vote is five to zero;  
21 confirmation is recommended to the Floor.

22 Congratulations.

23 MR. GUADERRAMA: Thank you very much, Senators.

24 [Thereupon this portion of the  
25 Senate Rules Committee hearing  
26 was terminated at approximately  
27 8:30 P.M.]  
28



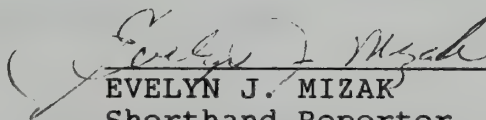
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16<sup>th</sup> day of April, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





**TESTIMONY OF ROBERT J. BUDNITZ**  
**BEFORE THE SENATE RULES COMMITTEE**

**APRIL 8, 1992**

My name is Robert J. Budnitz. I am the President of Future Resources Associates, Inc., a small technical consulting firm in Berkeley, California.

Background: I have a Ph.D. in physics from Harvard University, and I have been professionally involved for more than two decades in understanding technical issues related to radioactivity in the environment. My work has involved many different aspects of environmental radioactivity, including my authorship of an important Health Physics Journal article in 1974 entitled "Tritium Instrumentation for Environmental and Occupational Monitoring, A Review". This paper served for many years as the key reference document for how to measure extremely small concentrations of tritium in environmental water.

My most recent relevant experience concerning Ward Valley is my service as a member of the blue-ribbon "Select Committee on Vadose Zone Monitoring at Ward Valley" that DHS assembled in February 1991 to advise DHS on an appropriate monitoring program at Ward Valley. I am also a member of the Board of Directors of the Cal Rad Forum.

Objective Today: I am testifying here today to comment on misstatements and misconceptions about the Ward Valley low-level-waste site, that I understand were introduced as testimony during recent Senate confirmation hearings on the nomination of Dr. Russell Gould.

The Technical Issue: As I understand it, erroneous or misleading testimony at Dr. Gould's hearing has claimed that the studies of tritium at the Ward Valley site by Harding Lawson Associates (under subcontract to US Ecology, the site developer) reveal a



serious potential problem about Ward Valley's capabilities as an appropriate site. I believe that exactly the opposite is the case --- I believe that these studies demonstrate to me how well the Ward Valley site will perform as a repository!

In my short time here today, I wish to make the following technical points:

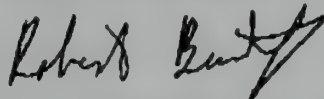
- o Harding Lawson Associates performed a ground-water analysis to understand how groundwater and contaminants might be transported at the Ward Valley site. I have reviewed that analysis and I believe that it correctly describes the potential phenomena at Ward Valley..
- o In my opinion, the transport at Ward Valley is well understood in terms of broader groundwater-transport theory. In fact, at Ward Valley as at most very arid sites there is a small net upward migration from deep below under all normal circumstances. The rare surface waters (from the occasional rainfall at the desert site) produce some downward migration, but even for large rainfalls this migration only goes down a few feet. There is high confidence that surface waters cannot travel downward more than a few tens of feet even for the most extreme surface-water conditions.
- o Therefore, even in the most pessimistic scenarios at Ward Valley --- very unlikely scenarios in which the engineered trenches fail to perform their function, and in which very much greater rainfall occurs than is at all likely in this very arid region --- I believe we have high confidence that the groundwater at Ward Valley will be very well protected. This means, of course, that the Colorado River is even more well protected, given that the topography and regional hydrology do not allow flow from the Ward Valley groundwater to the Colorado.





- o The fact that some very minute concentrations of tritium have been detected at depths around 100 feet at Ward Valley is well understood in terms of gaseous diffusion. Measurements at Ward Valley and analytical models developed to explain liquid and vapor transport confirm rather than refute the conclusion that the tritium at 100 feet got there by vapor-phase molecular diffusion. I believe the evidence to be overwhelming that even if highly-soluble radioactivity were to be released from the engineered trenches to surface waters, it would not be transported downward more than a few feet at Ward Valley.
- o Furthermore, the monitoring system that US Ecology will install and operate will allow us to check this conclusion, and thereby to assure that the hydrological-transport understanding is correct.

In conclusion, I believe that there is no feasible mechanism whereby radioactivity that might come in contact with rainwater through some very unlikely infiltration of the engineered trenches could travel more than a very short distance downward into the arid soils below the trenches. Transport down a few feet is possible; transport down to a few tens of feet seems very unlikely but cannot be ruled out. Transport any deeper than that is not consistent with our understanding of the phenomena. In sum, I believe that there is high confidence, based on sound technical information and analysis, that the Ward Valley engineered facility will contain all of the radioactivity, and that none will ever reach the deep groundwater.



ROBERT J. BUDNITZ

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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 3191  
SACRAMENTO, CALIFORNIA

THURSDAY, APRIL 9, 1992  
12:30 P.M.

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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

HEARING

STATE CAPITOL  
ROOM 3191  
SACRAMENTO, CALIFORNIA

THURSDAY, APRIL 9, 1992  
12:30 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

ALSO PRESENT

RUSSELL S. GOULD, Secretary  
Health and Welfare Agency

LISA BRANDT, Chief Counsel  
Department of Health Services

DAN HIRSCH, President  
Committee to Bridge the Gap

MICHAEL H. REMY, Attorney  
Remy and Thomas  
Committee to Bridge the Gap

JIMMY WING, Principal  
Legislative Counsel

EVE KORTINGER, Deputy  
Legislative Counsel



INDEXPage

Proceedings

1

Governor's Appointees:RUSSELL S. GOULD, Secretary  
Health and Welfare Agency

1

Statements by CHAIRMAN ROBERTI re:

Agreement on Ward Valley Adjudicatory  
Hearing

1

Response by MR. HIRSH re:  
Problems with Department's Proposal

1

Committee's Direction that Hearing  
Include Four Basic Items

1

Full Hearing on All Disputed Issues

2

Provision for Formal Full Discovery

2

Decision Should Be Made on Record  
of Adjudicatory Hearing

2

Decision on Ward Valley Should Be  
Made According to Adjudicatory Hearing

3

Issue of Final Decision-Making Authority

4

Discussion

4

Concern with Wording "Remaining Scientific  
Issues"

7

Discussion

7

Issue of Adequacy of EIR

10

Discussion

10

ALJ Forbidden to Issue Conclusions  
of Law

14

Discussion

14



Lack of Formal Discovery	18
Discussion	18
Need for Applicant to Submit Requested Documents	24
To Change Ultimate Decision-Making Authority of Director Requires Statutory Change	26
Discussion	26
Discovery for Applicant's Documents	32
Discussion	32
Scope of Hearing	33
Discussion	33
Agreement between Parties that final Decision to Issue License Rests with Director of Department	37
Items Still in Disagreement	37
Removal of Words "Remaining Scientific"	38
Agreement between Parties on Handling of Discovery Requests	38
Time Necessary for Discovery	38
Agreement between Parties that ALJ Will Have Authority to Extend Discovery Time for Good Cause	41
Agreement between Parties on Start Time for Hearing	44
"Remaining Scientific" Problem	45
Discussion	45
Definition of "Scientific Issues" to Include Compliance Record of Applicant	54





1		
2	Problem with Inability of ALJ to Issue	
3	Conclusions of Law	57
4	Discussion	57
5	Stipulation as to What Material Director	
6	May Use in Final Decision	59
7	Agreement between Parties to Use "Analysis	
8	of Law" rather than "Conclusions of Law"	62
9	Necessity for ALJ to be Truly Neutral	62
10	Discussion	62
11	Agreement between Parties on Selection	
12	of Administrative Law Judge	63
13	Problems with "Remaining Scientific"	64
14	Discussion	64
15	Agreement between Parties to Substitute Words	
16	"Scientific and Safety Issues" for "Remaining	
17	Scientific Issues"	69
18	Discussion of Intent	69
19	Motion to Confirm	70
20	Discussion by SENATOR MELLO	70
21	Request to Parties to Submit Modified	
22	Proposal for Printing in Journal	71
23	Committee Action	73
24	Termination of Proceedings	73
25	Certificate of Reporter	74
26		
27		
28		



## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order on the confirmation of Mr. Russell Gould as Secretary of the Health and Welfare Agency.

Last night we asked that we try to work out an agreement on a Ward Valley adjudicatory hearing. The Department of Health Services, which is an adjunct of the Agency Health and Welfare, has come up with a proposal, and I guess this was worked on all last night.

If Mr. Hirsch is here, would you like to come forward. I understand you have some remaining problems?

MR. HIRSCH: Yes.

Last night you directed us to try to see if we could not have an agreement on an adjudicatory hearing for four basic things. We reconvened after meeting with you and met for a couple hours last night. At that point, I identified a proposal that we felt would meet the needs of the Committee and ourselves for an adjudicatory hearing. To our surprise, there was no response by the Agency at that time and no counter proposal.

This morning we reconvened at about 9:00, and the counter proposal that you have seen was given to us. And we find that it basically is a non-starter.

Let me explain why very briefly.

You asked us to try to work out an adjudicatory hearing that would do four things. This proposal does none of those four.



1 First, that it should be a full hearing on all  
2 disputed issues regarding the Ward Valley project. The response  
3 by Secretary Gould is no, that the hearing can be only on issues  
4 that were narrowly limited. For example, the qualifications of  
5 the applicant, U.S. Ecology, would be forbidden to be dealt with  
6 in the hearing; the adequacy of the Environmental Impact Report,  
7 which is hotly disputed, would also be forbidden. A number of  
8 other issues would be forbidden. It would not be a full hearing  
9 on all the issues. It would be a narrowly limited one.

10 Second, you asked that the hearing have -- provide  
11 formal full discovery of all the needed information. The  
12 response by the Agency was again no. They propose instead only  
13 informal, brief, voluntary exchange of information where the  
14 applicant, U.S. Ecology, would be under absolutely no obligation  
15 to provide any information at all.

16 Third, you said the decision should be made on the  
17 record of the adjudicatory hearing and based on information put  
18 forward according to the rules of evidence, all of which would  
19 be subject to cross examination and rebuttal.

20 Again, the response by Mr. Gould was no. Two  
21 important components of that, first of all, the decision will be  
22 made in part on material not placed in the record of the  
23 adjudicatory hearing. In other words, the adjudicatory hearing  
24 would only be a piece of the evidence that would be used for the  
25 final decision, and that other evidence, therefore, would not be  
26 subject to the rules of evidence or to cross and rebuttal.

27 And secondly, when we asked about the burden of proof  
28





1 resting with the applicant, as is normal in the rules of such  
2 proceedings, we were told that that would not be the case  
3 because, quote, "This is not a proceeding that leads to  
4 something that has a burden of proof associated with it."  
5

6 That leads me to the fourth element which you asked  
7 us to work out last night, and that is that -- and this is the  
8 fundamental point -- that the decision on Ward Valley should be  
9 made according to an adjudicatory hearing. And again the  
10 response was no.

11 The administrative law judge who would preside at the  
12 hearing would not be an adjudicator, would not be permitted to  
13 make a judgment or a ruling on the matters of law at hand. The  
14 administrative law judge would issue a report dealing with  
15 findings of fact, but would be precluded from issuing  
16 conclusions of law. And the judgment about Ward Valley, the  
17 central matter we're all here about, would be made not by the  
18 administrative law judge based on that hearing, but would be  
19 made by Dr. Molly Coye, the Director of Health and Welfare,  
20 again, based in part on information from this hearing and in  
21 part from other information not in that record.

22 So, all four of the things that you identified as the  
23 components of an adjudicatory hearing that we should work out,  
24 we were unable to get a response that provides anything like an  
25 adjudicatory hearing.

26 Thank you.

27 CHAIRMAN ROBERTI: On the last point, let me try to  
28 go over some of those points myself, because I talked to



1 Counsel, and then I want Mr. Gould to interject, too.

2           On the question of who makes the final decision, our  
3 counsel tells us -- maybe they're here -- that under the normal  
4 rules of an adjudicatory hearing, the department-agency always  
5 makes the final -- department head, excuse me, always makes the  
6 final decision. That would, in essence, I gather, be Mrs. Coye.

7           MR. GOULD: That's correct.

8           CHAIRMAN ROBERTI: Maybe I'm wrong, but that's what  
9 my counsel tells me.

10          MR. HIRSCH: Two things -- if I could have my counsel  
11 join me?

12          CHAIRMAN ROBERTI: Yes, and Legislative Counsel.

13          MR. HIRSCH: As you know, this decision is basically  
14 a decision that the state is acting as a surrogate for the  
15 federal government under the Atomic Energy Act. And under  
16 those -- under that requirement, there is to be a decision made  
17 by in fact an administrative law judge as by an adjudicatory  
18 panel.

19          Even there, the final issuance of the license is  
20 issued by the Department or Director, but it is authorized by  
21 the ALJ after having heard the evidence. In other words, the  
22 adjudicator authorizes the issuance of the license. If that's  
23 done, then the Department head does take that action.

24          Mr. Remy, if you could respond.

25          MR. REMY: My name is Michael Remy from Remy and  
26 Thomas.

27          And the question you were asking is whether or not in  
28



1 the State of California all quasi-judicial proceedings leave the  
2 decision with the decision maker.

3 I think it's fair to say that for California  
4 procedure, as it currently is on the books, the ultimate  
5 decision is usually in a board or a director. But it is  
6 possible for the Agency to essentially delegate to someone else  
7 or to another body the decision with a reservation of more of an  
8 appealable function. In other words, for the Director to review  
9 it like an appeal, but the Director or the board does not  
10 reserve on t itself outright decision making.

11 So, it's possible by consensus -- we're not dealing  
12 with a bill -- in my opinion for the Department to consent to a  
13 procedure, and for the Director to consent to a procedure that  
14 comes closer to what under NRC procedures is a true  
15 quasi-judicial proceeding.

16 CHAIRMAN ROBERTI: So, you're saying that this is  
17 pursuant to the federal; the necessity for having the ALJ make  
18 the decision is pursuant to federal regulations?

19 MR. REMY: Yes, more so than current or existing  
20 state regulations. The -- California currently does not have --

21 CHAIRMAN ROBERTI: Our counsel, I believe, has only  
22 opined that it's state law that mandates the adjudicatory  
23 hearing. I don't know if we have an opinion from them that  
24 said under federal regulations, an adjudicatory hearing is  
25 necessary.

26 My point is, the reason why I feel justified in  
27 making -- I hate to say these words -- but as making an aspect  
28





1 of the confirmation hearing the Ward Valley adjudicatory hearing  
2 is that our counsel tells us that the Department head, who is  
3 responsible to the Secretary, has to have an adjudicatory  
4 hearing pursuant to state law.

5 If it's pursuant to state law, then what we would  
6 have to bind them by is the state law.

7 We do not have an opinion -- maybe it is the case, I  
8 don't know -- that pursuant to federal law, the Director has to  
9 make the decision. That being the case, I hate to tie up a  
10 confirmation because in justification, we have to do it pursuant  
11 to the law that we may feel he's enforcing or not enforcing, if  
12 you see my point.

13 We're saying that right now, we understand, it's our  
14 understanding by our counsel, that he has to enforce state law,  
15 which requires an adjudicatory hearing, but which the final  
16 decision, I guess, is made by the Director of the Department of  
17 Health.

18 MR. REMY: Well, you must also really consider the  
19 scope, the scope of that hearing.

20 Here, an adjudicatory hearing is really sort of an  
21 appendage to other decision making processes. And so, that  
22 comes full circle back to this federal-state. I mean, it really  
23 becomes the scope of the judicial or adjudicatory process.

24 And what we're saying is that even in California, the  
25 Agency has the discretion to provide for a broader adjudicatory  
26 process.

27 Currently it's a very narrow component that is thrown  
28



1 into the decision as a whole, into the record.

2 So, that's -- there is more than the one issue  
3 before you on this.

4 CHAIRMAN ROBERTI: Has our counsel arrived yet? We  
5 will have on them.

6 On the other points, Mr. Gould, I am concerned myself  
7 that "remaining" -- that in your text, you indicate "remaining  
8 scientific issues" would be considered.

9 I don't know what the word "remaining" means, but I  
10 personally would have a concern that that might limit the scope  
11 of an investigation profoundly.

12 MR. GOULD: Senator, I think our intent was not to  
13 limit the scope, but to get some focus to the hearing.

14 I think, as discussed with you last night in terms of  
15 the discussion you had with the Governor, he is interested in an  
16 open process, one that resolves the issues still in question,  
17 and that's what we were trying to basically paraphrase; is that  
18 that was our interest, to keep it open to those issues that are  
19 in question.

20 We're not trying to be selective, but we're trying to  
21 bring the range of issues into some kind of manageable fashion.

22 SENATOR MELLO: Mr. Chairman on that one point.

23 CHAIRMAN ROBERTI: Yes, Senator Mello.

24 SENATOR MELLO: As I understand word "remaining" in  
25 your first paragraph, "address remaining ... issues", and "which  
26 creates exclusive record before the Agency", this really exempts  
27 from this hearing the previous hearings, including the CEQA, and  
28



1 the EIR hearings.

2 MR. GOULD: If I could have my counsel address that,  
3 Senator.

4 SENATOR MELLO: Fine.

5 MS. BRANDT: Senators, for the record, Lisa Brandt,  
6 Chief Counsel, Department of Health Services.

7 The difficulty that we had in discussing this last  
8 night was that a complete re-doing of all the hearings that we  
9 have done to date, which were on the record. They were  
10 recorded. Every document that was received is in the record.  
11 There is a transcript of every words that was said at those  
12 hearings. In order to do all of that over, this hearing would  
13 take a minimum of a year-and-a-half.

14 That was not what we believed this Committee wanted  
15 us to do, and that is not what we wanted to do.

16 What we attempted to do was to say, let us consider  
17 that which we have already received in the hearings which we did  
18 pursuant to the statute. However, let us also recognize that  
19 some people want an additional forum to address those issues  
20 which still appear to be open.

21 So the intent was to take the record that we have  
22 already made and to add to it an additional record on those  
23 issues -- on the issues on which people are not satisfied.

24 SENATOR MELLO: Instead of adding to it, as I read  
25 this, you are limiting it to just the remaining scientific  
26 issues.

27 I agree with you about putting a time frame on it. I  
28





1 think the hearing should not go on and on, because, you know,  
2 the present Administration and the former Administration waited  
3 eight years for this urgency now to take place.

4 But I personally think, the way I read this, you are  
5 limiting the scope of this adjudicatory hearing to exclude the  
6 EIR, the CEQA material that was here earlier. You only want to  
7 talk about the remaining scientific issues.

8 MS. BRANDT: That's incorrect, Senator.

9 We do not intend to limit the hearing to those issues  
10 which were not addressed previously.

11 SENATOR MELLO: Why not remove the word "remaining"  
12 and the word "exclusive"?

13 MS. BRANDT: I apologize if the word "remaining",  
14 which was my word, was a word that was difficult to understand.

15 The intent of the word was those issues which people  
16 still want to address. In other words, those issues which have  
17 already been addressed, and that nobody wants to talk about  
18 anymore, don't need to be re-done. Those issues that people  
19 still want to talk about are the remaining issues.

20 SENATOR MELLO: I would hope that the hearings on the  
21 remaining scientific issues, that's fine, but I think when the  
22 decision is made, it must be made on the entire record,  
23 including the EIR and CEQA. And all of that becomes part of the  
24 formal record that will be before the decision maker.

25 MS. BRANDT: That is what this document says,  
26 Senator.

27 SENATOR MELLO: It doesn't say that to me.  
28



1           SENATOR BEVERLY: Paragraph Nine does, Senator.

2           SENATOR MELLO: Paragraph Nine takes it out of the  
3 hands of the --

4           SENATOR BEVERLY: It talks about the entire record.

5           MR. HIRSCH: If I may respond to that.  
6 The decision by Dr. Coye will be based on the entire record, but  
7 the material before the administrative law judge would not  
8 include the Environmental Impact Report, and parties would not  
9 be permitted to challenge the Environmental Impact Report in  
10 that adjudicatory or quasi-adjudicatory proceeding.

11           They would also not be permitted to challenge the  
12 qualifications of the applicant, and a number of other issues  
13 that don't fit within that phrase "remaining scientific issues."

14           MS. BRANDT: Mr. Chairman, one of the difficulties we  
15 have had in attempting to resolve this is that the positions  
16 that we have put forward have been mischaracterized.

17           There has not been a statement made that the EIR  
18 cannot be challenged. If someone feels that an issue that was  
19 raised in the EIR needs further elucidation, of course that  
20 issue can be raised.

21           What we have said is that we will not start from  
22 square one and re-do all of those things that were done before.

23           If someone wants to introduce the EIR in evidence at  
24 that hearing, that's perfectly fine, but we won't start over  
25 again, given that it's already in evidence in another record, in  
26 a previous record from the same proceeding. We won't start over  
27 again.  
28



1 CHAIRMAN ROBERTI: Is what she is saying  
2 satisfactory?

3 MR. HIRSCH: We were told explicitly that the  
4 adequacy of the EIR could not be litigated.

5 CHAIRMAN ROBERTI: But now she's saying that --

6 MR. HIRSCH: Let me make sure, because I'm not sure  
7 that's what she's saying.

8 Can the adequacy of the Environmental Impact Report  
9 be litigated, and can the ALJ make findings, rulings, on whether  
10 or not it is adequate?

11 MS. BRANDT: Not specifically in those terms.

12 The issues that are in the Environmental Impact  
13 Report are at issue in this hearing.

14 MR. GOULD: Senator, to take it back to a practical  
15 level, there have been questions about tritium, and what happens  
16 to tritium. That is an environmental issue that is not  
17 precluded from being addressed in this process, because we  
18 understand that continues to be an issue.

19 So, you know, I think we can get lost in a lot of the  
20 words that are being used.

21 CHAIRMAN ROBERTI: But specifically, are we talking,  
22 in your mind, for the most part specifically about the tritium  
23 issue?

24 MR. HIRSCH: No.

25 There are two central issues an adjudicatory hearing  
26 should resolve: A, has the applicant met its burden of proof in  
27 demonstrating that its application is sufficient, and it has  
28





1 appropriate qualifications for license to issue; B, has the  
2 Department met its burden of proof in demonstrating that the  
3 Environmental Impact Report is adequate and meets the  
4 requirements for EIR.

5 And those -- the proposal from the Agency is to  
6 restrict it to the first matter and only to a subpart of the  
7 first matter.

8 I would be unable -- I could raise matters that were  
9 also duplicated in the EIR, but I would be forbidden to argue  
10 that the EIR is inadequate, and the ALJ would be forbidden from  
11 issuing a ruling that the EIR was inadequate.

12 CHAIRMAN ROBERTI: That the EIR itself was  
13 inadequate, and you're saying they could only issue the ruling  
14 on what?

15 MR. HIRSCH: If there's a page of the EIR that is  
16 also brought into evidence on an issue related to the license.

17 But the adequacy of the EIR, that matter, there would  
18 be no ruling on, and we could not put forward evidence as to why  
19 it fails to meet the legal standards.

20 Let me -- normally, an administrative law judge in  
21 such a proceeding issues two things: findings of fact, and  
22 conclusions of law.

23 Under their proposal, the judge would be forbidden  
24 from issuing conclusions of law. And therefore, all of those  
25 issues as to whether the EIR is adequate, or whether the  
26 applications is adequate to meet the legal standards, would be  
27 forbidden to be litigated. It's not an adjudicatory hearing.  
28



1 MR. GOULD: Senator, if I might, let me give you a  
2 broad sense of the discussion we had.

3 There are clearly issues where we still are not  
4 together. We acknowledge that.

5 There are some issues, as you referenced, where we  
6 believe that the statutory construction of what we can do under  
7 the Administrative Procedures Act preclude some of the things  
8 that Mr. Hirsch has requested. Specifically, you mentioned one  
9 of them being the Director's role.

10 You know, I think we have tried to be open. We have  
11 tried to discuss these things, and we will continue to try to do  
12 that, but there are some elements that are going to be very  
13 difficult for us to resolve because of the statutory  
14 construction.

15 You know, I think it's a situation where it's not  
16 something that's going to be resolved, you know, quickly. It's  
17 not something that we can, I think, among us, resolve every  
18 issue, because these are complex issues in terms of how the  
19 structure of a hearing might proceed.

20 You know, I think we've been very open. We have  
21 moved a long way in terms of trying to address the issues, and  
22 trying to establish a procedure that, quite frankly, our  
23 attorney, and we believe the courts, still indicate does not  
24 require this process. But we've moved to it voluntarily because  
25 we think it will help educate, and provide information to  
26 people. And we have included elements such as cross  
27 examination, having it done before an administrative law judge.  
28



1 It is an adjudicatory hearing with discovery.

2 We've made a number of changes. And that discovery  
3 process is consistent with the APA, the Procedures Act. We have  
4 tried to be responsive to that.

5 So, I think, you know, if your question is, have we  
6 come to resolution on all these things? Certainly not. And I  
7 don't think that we will be able to completely satisfy the  
8 concerns and the requests that are being raised, because some of  
9 them are going to be precluded statutorily.

10 I just wanted to give you that general framework.

11 CHAIRMAN ROBERTI: I understand.

12 That aspect where the administrative law judge cannot  
13 issue a conclusion of law, but only a finding of fact, is that  
14 pursuant to statute?

15 MS. BRANDT: No, Mr. Chairman, that is pursuant to  
16 the problem that I raised to you earlier, which is that the  
17 administrative law judge will have presided over one hearing in  
18 a series of hearings.

19 And if the administrative law judge is expected to  
20 make a final conclusion of law on the entire package, we get  
21 back into the year-and-a-half minimum.

22 CHAIRMAN ROBERTI: What is the benefit of a finding  
23 of fact if you can't --

24 MS. BRANDT: The finding of fact is --

25 CHAIRMAN ROBERTI: -- issue --

26 MS. BRANDT: -- extremely beneficial and extremely  
27 important to the proponents, because a finding of fact made by  
28





1 an ALJ is virtually never overturned by a court. And a Director  
2 who does not adopt the findings of fact of an ALJ is almost  
3 always overturned by a court.  
4

5 So, those are essentially final filings -- findings  
6 of fact, for all practical purposes.

7 CHAIRMAN ROBERTI: Which could then be subject to  
8 further litigation by --

9 MS. BRANDT: They would be reviewable in a court  
10 upon review of the license decision and the EIR certification.  
11 And it would be of crucial importance that, for example, an ALJ  
12 has found that tritium does in fact migrate down to groundwater,  
13 and if the Director subsequently finds, well, nevertheless,  
14 there is no harm to the public in allowing the site to be built  
15 in this fashion.

16 So, what we were trying to do was to address the  
17 factual disputes, the factual issues, and make a binding record  
18 of those facts that the Director can then consider.

19 CHAIRMAN ROBERTI: Why, Mr. Hirsch, would you be  
20 skeptical of that process? The finding of fact could be raised,  
21 the subject matter that we're dealing with is of enormous public  
22 consequence. We're almost saying we're talking about a Director  
23 who's going to be absolutely arbitrary as far as the public  
24 health is concerned, public attitude be damned.

25 Is that correct?

26 MR. HIRSCH: Well, I think that you misread the  
27 argument.

28 I believe that what's being said is that findings of



1 fact -- for example, does tritium migrate or not -- would have  
2 some weight, but that the fundamental question as to whether or  
3 not the applicant has met the requirements, whether that fact  
4 has any relevance on whether the license should be issued or not  
5 is totally, in their proposal, in the discretion of someone who  
6 has already been a very vociferous advocate of that activity.  
7

8 The fact is only relevant in a nexus to the  
9 conclusion, and if one is prohibited from even making -- dealing  
10 with those conclusions, then it goes nowhere.

11 If the facts are that there is an aquifer connected,  
12 tritium migration at a rapid rate, there is nothing that  
13 prohibits the Director from saying, "I believe that the  
14 probability of any leaking to be extremely small, and I find  
15 that the standard for adequate application is met."

16 There is no nexus between the first part, which is  
17 the fact, and the conclusions, as to whether the standards have  
18 been met.

19 And I frankly -- if I may make one last comment. If  
20 indeed the Agency says that the findings of fact will  
21 essentially be untouched by the Department head, why would they  
22 have problems with the conclusions of law being permitted to be  
23 issued also by the administrative law judge, and give that kind  
24 of great deference to the findings of that body, particularly  
25 since those findings would be based on material in that record  
26 that has been printed to be challenged, as opposed to all this  
27 extra record material.

28 I believe that's particularly important because of



1 the admission before your Committee several weeks ago that there  
2 had been ex parte contacts between the decision makers and the  
3 applicant. It seems to me, because of the controversy of this  
4 issue, it would be extremely important that we do have those  
5 findings of fact and conclusions of law made by the ALJ, who's  
6 independent and would be immunized from ex parte communications,  
7 makes the decision based on the record before him or her, and  
8 that if necessary, some appeal process be provided where there  
9 is a determination based on the rules of what should be  
10 appealed.

11 But if they're willing to permit the facts, why not  
12 also the conclusions of law?

13 MR. GOULD: Senator, first I have to comment.

14 You know, this characterization of the discussions  
15 we've had today I find to be, I guess, rather offensive.

16 We tried very hard to work with the other side in  
17 terms of their perspective and looking at what could be done.

18 I think the characterization of Dr. Coye, who would  
19 have responsibility for licensing this, as being a "vociferous  
20 advocate", and therefore prejudicing her view of this, I don't  
21 think shows respect for the kind of person she is and the kind  
22 of judgment she would exercise.

23 We have deliberately not licensed this facility  
24 because we wanted to make sure that we were absolutely certain  
25 as to whether this was something we should move forward on. And  
26 I think we have had that authority. We continue to have that  
27 authority, if you will, under our understanding of the law. We  
28





1 have chosen not to exercise that.

2 And so, I just think for the record, that kind of  
3 characterization is not fair nor is it accurate in terms of the  
4 kind of attention we've paid to this issue.

5 MR. REMY: If I might just add one point and address  
6 the assertion made that the court would virtually never overturn  
7 a finding of fact, that is based on the assumption that the  
8 court finds that there is no substantial countervailing evidence  
9 in the record.

10 What we have here, however, is a proposal that the  
11 Director can choose from other proceedings to support its  
12 factual determinations or legal determinations.

13 So, under those circumstances, it is really not  
14 accurate to say that the final decision maker, the Director,  
15 could not use other facts to overcome the facts before the  
16 adjudication.

17 CHAIRMAN ROBERTI: What are the other remaining  
18 decisions, issues?

19 MR. HIRSCH: No formal discovery is one.

20 CHAIRMAN ROBERTI: Of the applicant.

21 MR. HIRSCH: No formal discovery of DHS, either.  
22 There is a voluntary, but unenforceable, commitment to make  
23 documents available.

24 In addition, there's only a 30-day period for  
25 discovery, and no time to do real discovery results, discovery  
26 of use.

27 MS. BRANDT: Mr. Chairman, once again that's a  
28



1 misstatement of what the document says.

2           There is formal discovery pursuant to the California  
3 Administrative Procedure Act. There is not a formal process for  
4 enforcement because the only process that's constitutional in  
5 California for enforcing discovery is to go to Superior Court,  
6 and ask the Superior Court to do it.

7           We have not incorporated that in this, which is  
8 essentially a voluntary proceeding.

9           So, what we have done is, the Department of Health  
10 Services has committed to voluntarily follow any decision of the  
11 administrative law judge.

12           Obviously, I can't commit U.S. Ecology to do  
13 likewise.

14           Again, this is a record that will be made for court  
15 review. If discovery is not complied with, the court obviously  
16 will have that in front of it and will consider that as being a  
17 major component in how valuable the decision was at the end.

18           CHAIRMAN ROBERTI: Thank you very much.

19           I'll ask our counsel, Mr. Wing, is there a different  
20 between informal and formal discovery?

21           MR. WING: I would think the formal would be  
22 enforceable, whereas the informal as is set out here would be  
23 within the discretion. But here the Department has committed  
24 itself to obey the order of the ALJ.

25           CHAIRMAN ROBERTI: You're saying the Department has  
26 committed itself to obey the order of the ALJ, so through that  
27 aspect, would it be enforceable?  
28



1 MR. WING: Enforceable in what way did you want,  
2 Senator?

3 CHAIRMAN ROBERTI: That they would have to  
4 comply with discovery.

5 MR. GOULD: Senator, let me suggest on that that we  
6 are committing ourselves to providing that. As you well know,  
7 we have the opportunity to appear before you on a number of  
8 occasions. Clearly, I think, it might be brought to our  
9 attention if we were not complying with that.

10 I think you have our assurance that would not be  
11 something we would want to do, have to raise that issue.

12 CHAIRMAN ROBERTI: So, if the ALJ ordered you to  
13 produce documents, you're saying you would comply?

14 MR. GOULD: Absolutely.

15 CHAIRMAN ROBERTI: Mr. Hirsch and maybe our counsel  
16 are saying you don't have to comply if you don't want to.

17 MR. HIRSCH: And U.S. Ecology not at all.

18 CHAIRMAN ROBERTI: We'll get to U.S. Ecology in a  
19 moment.

20 MR. REMY: May I add one thing.

21 I think even if we were to seek the assistance of a  
22 court, it -- no court would probably intervene until the end of  
23 the process, the total process. So, it's sort of a total  
24 consensual thing.

25 CHAIRMAN ROBERTI: The issue of U.S. Ecology  
26 documents -- and maybe I'm wrong, but that doesn't concern me as  
27 much -- if those documents are not in the possession, which I  
28





1 assume they would be, of the DHS --

2 MR. HIRSCH: Many are not. For example, waste stream  
3 information --

4 CHAIRMAN ROBERTI: Which?

5 MR. HIRSCH: The information on what the waste stream  
6 looks like. DHS has said they don't possess it. It's in the  
7 possession of U.S. Ecology. And that's true for a great deal of  
8 the information. They are the applicant, after all.

9 CHAIRMAN ROBERTI: Mr. Wing, something like the waste  
10 stream information, if U.S. Ecology had it, nobody else could,  
11 under the provisions we have here, there'd be no way of  
12 obtaining it?

13 MR. WING: That's right, Senator.

14 CHAIRMAN ROBERTI: I guess you're arguing there's no  
15 way we can do that anyway?

16 MR. GOULD: Under the Administrative Procedures Act,  
17 we are providing for the discovery that is there, and beyond  
18 that, committing ourselves to comply with that. So we are doing  
19 what we can.

20 And as you recall, it was your counsel who, in  
21 looking at it, their feeling was that our requirement was to go  
22 with the Administrative Procedures Act in terms of an  
23 adjudicatory process. Although we don't agree with that  
24 finding, we have gone along with that, and then committed  
25 ourselves beyond that in terms of discovery.

26 MR. REMY: There are procedures in California under  
27 the APA whereby the Agency can issue a subpoena, but usually the  
28



1 party has to make the request of the Agency at that particular  
2 point. That's not being proposed here at all.

3 In other words, for example, regulations could  
4 provide that the applicant must comply with such requests by the  
5 Agency. In other words, what happens is that the Agency would  
6 have to make the request of the applicant on behalf of the party  
7 requesting it.

8 So, it's possible. It can be done.

9 CHAIRMAN ROBERTI: Do you have any objection of  
10 incorporating something whereby the Agency would be required to  
11 seek information from the applicant?

12 MR. GOULD: Senator, I'm not familiar with that  
13 procedure, but I'll be willing to look at that and see if that's  
14 appropriate. I just don't know enough about it to give you an  
15 answer.

16 SENATOR MELLO: Mr. Chairman, I think that's a very  
17 important point, because the information I've reviewed, U.S.  
18 Ecology, which has some types of operations in other states --  
19 Nevada, and Washington, I believe in South Carolina -- have had  
20 quite a few incidents of failures in those areas and actions  
21 taken against them by different entities.

22 I don't have that information right here, but I do  
23 have it up in my office.

24 Maybe I can ask Mr. Hirsch, can you describe briefly  
25 what is the track record for U.S. Ecology in other states where  
26 they have these operations operating?

27 MR. HIRSCH: That is one of the central issues we  
28



1 would want to litigate in such a proceeding and would be  
2 forbidden to do so under these -- this proposal.

3 But there are large amounts of record which would not  
4 be in the hands of the Agency that would deal with violations by  
5 this company in Illinois, Washington State, and other states.  
6 And the records of the leakage and so forth would also not be  
7 available except from U.S. Ecology.

8 Without discovery, formal discovery rights, a major  
9 portion of what one needs to have to know whether or not this  
10 company should indeed be granted this license would be  
11 unavailable.

12 SENATOR MELLO: To you knowledge, they have had  
13 incidents of violation in other states?

14 MR. HIRSCH: They abandoned their site in Illinois,  
15 and the State of Illinois and the NRC had to take legal action  
16 to get them back on the site. There is substantial leakage  
17 there.

18 The dump site in Maxi Flats also had to shut because  
19 of leakage. They've been named the responsible party for the  
20 contamination at that site.

21 There have also been violations at Beatty, Nevada, in  
22 fact, a few weeks ago.

23 But that material would not -- we'd have to get it  
24 from U.S. Ecology, and we can't do that without formal discovery  
25 rights.

26 CHAIRMAN ROBERTI: Well, of the two issues that I  
27 have heard, my own opinion is that there should be some sort of  
28





1 requirements that U.S. Ecology should have to submit documents,  
2 because if the flow of the stream, if that's one of them, one of  
3 the things that has been concerning is -- and that is, if there  
4 is any possible contamination of the underground river water or  
5 sources to water supplies -- that's a major concern.

6           However, on the other hand, what we've been -- from  
7 one point, which I don't think the people protesting Ward Valley  
8 have made, in my mind, and that is that the final decision  
9 cannot be made by the Department head.

10           MR. HIRSCH: If I could respond to that, maybe we  
11 could resolve it.

12           CHAIRMAN ROBERTI: I want you to know, so you'll know  
13 the context I'm coming from.

14           I'm not coming from a policy context. I'm coming  
15 from a context of where I think our authority is on this  
16 Committee, and I don't feel -- I mean, we could pressure the  
17 Administration and make a policy decision, but I don't think  
18 that's the perspective of a confirmation hearing.

19           Why I think it's legitimate to have it here is that  
20 we feel that the Director and the Secretary should comply with  
21 the law. And our opinions tell us that the law requires an  
22 adjudicatory hearing under state law. The state law aspect is  
23 that the final decision is with the Director.

24           MR. HIRSCH: If I could respond, I believe that this  
25 would meet your concerns.

26           It seems to me that what is reasonable, and I believe  
27 the Committee has wanted in fact, is an adjudicatory proceeding  
28



1 that does in fact resolve the disputed issues of fact and law.

2  
3 To maintain the final authority with the Director  
4 would mean, I believe, no major problem. And that there should  
5 be the normal appeal procedure from that decision to the  
6 Director. The Director would have the right to rule on that  
7 appeal according to the normal way she's supposed to rule on  
8 appeals. If she overturns the decision, her decision would also  
9 be appealable to the judiciary.

10 There's no problem with the Director retaining the  
11 ability to hear an appeal, but what disturbs us is that the  
12 so-called adjudicatory hearing would not involve any  
13 adjudication and would not have a decision at the end of it  
14 based on that record.

15 What we want is a decision from that body based on  
16 the record before it put in the rules of evidence -- by the way,  
17 sufficient time for discovery. This 30 days, particularly if  
18 someone resists discovery, can't possibly work -- and a decision  
19 made: have they met the standards or not. And then both  
20 parties, all parties, can appeal that decision to the appellate  
21 body within the DHS, which should be an appeal board, but if  
22 there's not, directly to the Director, and from there to the  
23 judiciary.

24 I would think that that meets your requirements of  
25 the state law, and also your concern that there be a full  
26 adjudicatory proceeding.

27 MR. GOULD: Senator, maybe I should have counsel  
28 respond, but we feel that would clearly require a statutory



1 change, to change the authority and the review process of the  
2 Director of Health Services in this process.

3 MS. BRANDT: That's correct, Senator.

4 What we have done is, we have tracked the provisions  
5 of the Administrative Procedure Act. The section is in fact  
6 cited in the submittal, and that section says how a decision  
7 goes from the administrative law judge to the Director.

8 And I need to reiterate once again that the  
9 fundamental problem here is that the proponents want a full  
10 hearing of every issue, including those that have already been  
11 heard. Unless you do that, you cannot have a final decision by  
12 the ALJ, because the ALJ would then have to hear all the issues  
13 de novo from the beginning of the hearings that we have already  
14 done.

15 CHAIRMAN ROBERTI: Let me ask our counsel now, would  
16 the appeal from the ALJ -- rather, excuse me, from the Director,  
17 as Mr. Hirsch outlined, to a judicial authority require a  
18 statutory change?

19 Which, I take it, if it requires a statutory change,  
20 maybe I'm wrong here, then that would be adding a new aspect to  
21 an adjudicatory hearing.

22 MR. WING: Senator, the law, the way it's set out,  
23 vests within the Director the discretion to grant or deny the  
24 license.

25 I can't see any appeal up to a court unless there's a  
26 total abuse of discretion, and that's highly doubtful.

27 You can always go into court, but whether you can get  
28





1 in is another question.

2 MR. REMY: May I?

3 I believe that in California, it is perfectly  
4 appropriate for the Director to delegate the decision making  
5 process, as long as he reserves -- he or she reserves on to  
6 themselves the ability to overrule.

7 So, it's a question of delegation, a question of  
8 willingness, not a question of statutory authority.

9 MS. BRANDT: I disagree with that, Mr. Chairman,  
10 because what Mr. Hirsch is talking about is not a delegation  
11 downward, reserving to herself the final decision. It is the  
12 Director acting as an appellate body and doing what is  
13 essentially appellate review, rather than reserving the decision  
14 to herself. And those are fundamentally different.

15 For the Director to serve as an appellate body would  
16 require statutory change.

17 MR. REMY: We disagree.

18 CHAIRMAN ROBERTI: Back to you, Mr. Wing.

19 MR. WING: Is the question whether --

20 CHAIRMAN ROBERTI: The Director would be acting as an  
21 appellate body herself. Does that constitute, would that  
22 constitute the need for statutory change?

23 MR. WING: In my judgment it would, because the way  
24 the statute is written, it's vested in her.

25 CHAIRMAN ROBERTI: He seems to think it's vested in  
26 her.

27 MR. WING: It's not delegateable. I can't see that.  
28



1 MR. REMY: It's an exercise of discretion. And if,  
2 for example, a Director has staff make recommendations on a  
3 technical aspect, in this particular instance to delegate to a  
4 process and body a determination of factual and legal questions,  
5 the assertion here is that somehow that has given away the  
6 decision making power of that Agency.

7 In my opinion, a court would not be able to overturn  
8 that unless it found that to be an abuse of discretion.

9 CHAIRMAN ROBERTI: I understand your point. I sort  
10 of feel compelled, however -- and maybe I can get some help from  
11 Senator Petris but let me finish my thought, then maybe you can  
12 alter my way of thinking -- but I feel compelled to follow our  
13 own counsel.

14 If this necessitates a statutory change, then that's  
15 hard to make that an aspect of an adjudicatory hearing, because  
16 that's not part of the existing adjudicatory hearing statute.

17 But what do you have to think about this, Senator  
18 Petris?

19 SENATOR PETRIS: I think there is some confusion here  
20 between the internal process and an appeal beyond the process  
21 into the judiciary.

22 I think the normal process is, an administrative law  
23 judge hears the matter, and I think in all cases, provides  
24 findings of fact and conclusions of law, just like a Superior  
25 Court trial judge would.

26 But that always goes to the Agency with a  
27 recommendation. Now, when the Agency reviews that, that's not  
28



1 an appeal in the normal sense that seems to be talked about  
2 here.

3 MR. REMY: I agree.

4 SENATOR PETRIS: It's an appeal in the sense that  
5 there's another crack at it at the next level, but it's not an  
6 appeal in the formal judicial sense.

7 So internally, it's just part of the process. It  
8 goes from the ALJ to the Director of the Agency.

9 Now, when that decision is made by the Director,  
10 after reviewing the ALJ's decision, then the party is free to  
11 jump into the judiciary system.

12 That's the normal process as I understand it. That's  
13 -- that can more properly be labeled an appeal.

14 So, we've got an internal process that really  
15 shouldn't be called an appeal. It's more like a review.

16 MR. REMY: I think it's an exercise of discretion.  
17 The ultimate discretion is still with the Director.

18 SENATOR PETRIS: Still with the Director. So, we  
19 can't change that without a change in the statute.

20 I don't think we can agree here to say we're going to  
21 have the ALJ hear it and make the final decision, and walk away  
22 from it. We're not authorized. We can't do that under the law.

23 Isn't that right?

24 MR. WING: Yes.

25 SENATOR PETRIS: And if we did, let's say we did, and  
26 the decision is favorable to the opposition, then some other  
27 party out there that's not part of these proceedings can  
28





1 challenge that as being a violation of the normal process, a  
2 deviation, and being outside the statutory authorization, and  
3 you've got another reason for litigation by someone not even in  
4 this room.

5 MR. REMY: Well, I think, arguendo, we are accepting  
6 what you're stating, and that is that in California, the  
7 ultimate decision is in either a board or the Director, in this  
8 case the Director.

9 But what we're advocating and seeking is an  
10 adjudication of the total scope. In other words, the factual  
11 questions, legal questions, and the record, the total record.

12 With that, we would -- we believe that the process  
13 would have produced something on which the Director will  
14 exercise his or her discretion. And it is that record which  
15 would be reviewable ultimately by a court, and that would be  
16 satisfactory.

17 But we're seeking a full adjudicatory proceeding that  
18 is all-encompassing before you get to that stage.

19 SENATOR PETRIS: What's lacking under the  
20 Department's offer?

21 MR. REMY: Almost everything.

22 SENATOR PETRIS: They're claiming that the discovery  
23 will be available, but apparently it has some voluntary or  
24 informal aspects --

25 MR. REMY: Well, first of all --

26 SENATOR PETRIS: -- and they're limiting the judge to  
27 findings of fact only, not conclusions of law. So, that's  
28



1 another thing.

2 MR. GOULD: Senator, if I might clarify one point.

3 There was some discussion of U.S. Ecology, their  
4 information. Our understanding is that we can  
5 obtain information from U.S. Ecology through our requests, and  
6 then it's a matter of public record, relevant documents could be  
7 got.

8 So, there is a mechanism to get other information.

9 SENATOR PETRIS: Well, I think in the absence of a  
10 formal proceeding, that would depend on their willingness to  
11 give it up.

12 Let's say the stream information. That seems to me  
13 to be vital and ought to be reached. It also raises the  
14 question in my mind, if the proceedings up to now have been  
15 really thorough and all aspects of this problem examined, how  
16 come the Department doesn't have that stream flow information?

17 Is it because they wouldn't produce it, or because  
18 the Department didn't think of asking for it? I don't know the  
19 reason.

20 MS. BRANDT: We do have the stream flow information,  
21 Senator.

22 What we did not have is the original manifests from  
23 which that information was taken.

24 SENATOR PETRIS: Oh, I see. Because I understood  
25 earlier that that's not available.

26 MS. BRANDT: The waste stream information is  
27 available. What the proponents have asked for is the underlying  
28



1 original manifests.

2 SENATOR PETRIS: The basic documents.

3 MS. BRANDT: That's correct.

4 The -- to further elucidate what Mr. Gould said about  
5 obtaining information from U.S. Ecology, if the Department  
6 determines that the information is necessary to the licensing  
7 proceeding, it would not be voluntary for U.S. Ecology to  
8 provide it.

9 So, we could have a procedure whereby, if the ALJ  
10 determines that information necessary to the licensing  
11 proceeding is in the possession of U.S. Ecology, and that the  
12 Department needs it for the licensing proceeding, it could be  
13 obtained from U.S. Ecology through the Department.

14 SENATOR PETRIS: On its own initiative, or would you  
15 be relying on an order from the judge?

16 MS. BRANDT: What we would be doing is, let's assume  
17 that one of the parties says, "I need such and such a document  
18 from U.S. Ecology, and they won't provide it."

19 If the judge made a decision that that document was  
20 relevant to the proceeding, the Department would be willing to  
21 permit that it would then obtain the document from U.S. Ecology  
22 and make it available in response to that, through the same  
23 process that we would make our own documents available.

24 SENATOR PETRIS: Since they haven't been designated  
25 as a licensee, it would be in their interest to cooperate.

26 MS. BRANDT: That's correct. Well, they have that  
27 obligation to the Department.  
28





1           SENATOR PETRIS: Maybe it would make good practical  
2 sense, too.

3           MS. BRANDT: Senator, the one thing that makes  
4 overriding good sense in this is that if the opponents of this  
5 process raise an issue with sufficient certainty so that  
6 documents need to be put into the record in opposition, the  
7 documents will be put into the record.

8           It's the raising of the issue that causes the  
9 documents to flow, not some sort of legal process that enforces  
10 that.

11          CHAIRMAN ROBERTI: Well, I tend to think, back to  
12 what I said earlier, try to bring this to some sort of narrowing  
13 of the pathway, that the request for a process other than the  
14 Director being the final decision maker goes beyond what we  
15 contemplate our authority here.

16          However, on the scope of the issues question --

17          MS. BRANDT: Is there anything we can further clarify  
18 for you on the scope of the issues?

19          CHAIRMAN ROBERTI: I'm very concerned that the scope  
20 of the issues could just pretty much shut out everything, and I  
21 don't think that's what the Agency would do.

22          MS. BRANDT: No, and this actually, this part --

23          CHAIRMAN ROBERTI: We have people who are, you know,  
24 very, very concerned about --

25          MS. BRANDT: Certainly, and this part of the proposal  
26 actually tracks the NRC procedure, because that is what the  
27 NRC does. The ALJ determines which are genuinely disputed  
28



1 issues and which are simply PR things that some --

2 CHAIRMAN ROBERTI: Who does do this?

3 MS. BRANDT: The administrative law judge hearing and  
4 NRC hearing.

5 So, we're actually paralleling the NRC process in  
6 having the administrative law judge narrow the issues to those  
7 that appear to be genuine, legitimate issues in dispute.

8 SENATOR PETRIS: It seems to me you're narrowing  
9 those issues in advance, not even letting them go before the  
10 judge. If you're saying that the following matters will not be  
11 permitted to be considered -- for example, the qualifications of  
12 the applicant --

13 MS. BRANDT: Senator, again, we're having some  
14 problems with misrepresentations about what we have said.

15 What we have said is that the general qualifications  
16 of the applicant in the past at other sites would not be  
17 considered a legitimate issue, because it isn't a scientific  
18 issue to be addressed.

19 However, if a site -- if there is a specific issue --  
20 this licensee does not know how to do X; this licensee in  
21 predicting whether the site is suitable didn't demonstrate  
22 appropriate knowledge --

23 SENATOR PETRIS: If the licensee says, "Yeah, we know  
24 how to do X," and some state is currently suing them for not  
25 doing X, that's a legitimate fact of evidence that should be  
26 introduced, it seems to me.

27 MS. BRANDT: The fact that a state is suing may or  
28



1 may not be a legitimate fact, but the underlying facts in that  
2 case may be legitimate.

3           SENATOR PETRIS: But you're not going to get to it  
4 unless you let it in, let the court examine it.

5           I think that there's a tendency here to -- you know,  
6 I appreciate the -- I know you've made concessions, and you've  
7 come a long way from your original position which was, "Hey, we  
8 don't have to do this stuff."

9           Now you're saying, "Well, we will do this, and this,  
10 and that," but there's still a tendency to be too confining, it  
11 seems to me.

12           If I were interviewing a school teacher for a job,  
13 and I asked that teacher about proficiency in Spanish. The  
14 teacher says, "I speak Spanish very well."

15           "Well, where did you work before?"

16           "I worked at Such-and-Such School."

17           I want to call that school, "No, that teacher doesn't  
18 know more than 'good morning' and 'good afternoon', period."

19           That's a legitimate inquiry, and it should be  
20 legitimate here, too. I don't know why that should be excluded.

21           And I don't know what the merits are, you know, but  
22 the fact that there is something in the track record that  
23 suggest a weakness there needs to be explored and shouldn't be  
24 excluded in advance.

25           MS. BRANDT: No.

26           I think that we're being unfairly accused of having  
27 excluded things in advance.  
28





1           What I've tried to do is to say that the hearing  
2 should be focused on specific issues, not on general  
3 allegations. "This licensee has had a bad track record  
4 elsewhere," is a general allegation.

5           "This licensee doesn't know how to do a specific  
6 thing" is a specific issue.

7           So, the attempt is to narrow the issues to legitimate  
8 issues that can be talked about.

9           We have already had a very long series of hearings  
10 where people could come and say anything they wanted, whether or  
11 not it was directly relevant, whether it was general or not, and  
12 the focus of this hearing was intended to be the intensive  
13 examination of legitimate serious issues that people want to  
14 talk about.

15          SENATOR PETRIS: Well, I understand that, but I still  
16 have a feeling of constriction here instead of -- the issues  
17 that they're seeking to raise, it seems to me, are legitimate  
18 issues.

19          Maybe there ought to be agreement in advance that  
20 these are the issues that are to be determined. You do that at  
21 a pretrial anyway.

22          MS. BRANDT: It's a little difficult since we don't  
23 know who all will want to be parties at this point.

24          SENATOR PETRIS: Well, that will be flushed out in  
25 the course of the process, I imagine.

26          MS. BRANDT: That's correct, but that's the place,  
27 once we know who the parties are, I think that's the place to  
28



1 decide what the issues will be, and let all the potential  
2 parties --

3           SENATOR PETRIS: We know who some of the parties are,  
4 or want to be. They've been a party here for a couple of days.  
5 That's not subject to guess-work or speculation.

6           Beyond that, of 'course, we dont' know, I agree.

7           MR. HIRSCH: If I may see if we can a little closer  
8 to where -- see where we are.

9           It seems to me that there's a clear resolution here  
10 possible, and this interaction has been helpful about it, and I  
11 would suggest along the following lines.

12           The final decision on whether to issue this license  
13 would be in the hands of the Director. She can use her  
14 discretion and simply ignore the findings below if she wishes.  
15 We could challenge that as an abuse of discretion if that were  
16 to happen, and there would also be political consequences to her  
17 for going against a decision that had been made after careful  
18 consideration of the evidence.

19           And I believe that that would a substantial movement  
20 on our part, and it resolves your concern on the statutory side  
21 of matters.

22           I believe that on the issues that should be  
23 addressed, it should be a full hearing on all the issues in  
24 dispute. I don't think they should limit them in advance,  
25 particularly issues of their past practice of the applicant, and  
26 the adequacy of the EIR, which are some of the most hotly  
27 contested issues at present, need to be open for resolution in  
28



1 the hearing.

2 Yes, I think, in fact, all you have to do is remove  
3 the two words "remaining scientific", and keep it as it is to  
4 allow the public to address the issues relating to whether a  
5 license should be granted.

6 On the question of discovery, think we've reached a  
7 proposal. It's a little awkward, but we make a request for  
8 discovery to U.S. Ecology and to the Department of Health  
9 Services, and they will either voluntarily comply, or if in 30  
10 days we discover that they have not, then go to the ALJ and ask  
11 for an informal ruling, and the Department is committed to  
12 comply with the ruling if it is against them, and if it against  
13 U.S. Ecology, to force -- to obtain the documents themselves and  
14 then provide them to us.

15 The way for that to work, though, is that the time  
16 period for discovery can't work in this 30-day period. That's  
17 just too -- I mean, if we have 30 days in which to get a  
18 response --

19 CHAIRMAN ROBERTI: You're saying when everything has  
20 to be done, it can't be done in 30 days. The Department says  
21 they want it 30 days.

22 What do you think?

23 MR. HIRSCH: What I'm saying is, 30 days from the  
24 discovery request there's supposed to be a providing of  
25 materials; 30 days from thereafter, according to their proposal,  
26 the hearing starts.

27 And I would simply say that 30 days from the time  
28





1 discovery disputes are resolved and the material's provided,  
2 then the hearing starts.

3 CHAIRMAN ROBERTI: The production of materials.

4 MR. HIRSCH: Right.

5 CHAIRMAN ROBERTI: Rather than from the --

6 MR. HIRSCH: Date at which the request was made.

7 In other words, we don't want a situation were the  
8 opposing party --

9 CHAIRMAN ROBERTI: I understand that.

10 Is there any problem with that?

11 MR. GOULD: I just don't know at what point in time  
12 the requests are made, and how that -- I mean, we're trying to  
13 manage the process, as we described, in a reasonable fashion.

14 SENATOR PETRIS: Let's take an example. There's a  
15 request for documents. The time period to make the request is  
16 30 days. It's made in 10 days. The documents are produced 10  
17 days thereafter. That starts the next 30 days for use of the  
18 documents and the beginning of the hearing.

19 That seems to be what they're saying. Does that  
20 sound reasonable?

21 Of course, I don't know. I'm assuming shorter  
22 periods, but I know you don't know what the dates are, but I  
23 know there are time periods, however. You can't go beyond a  
24 specific number after the triggering.

25 MR. GOULD: Senator, maybe one way to deal with that  
26 would be give the authority to the administrative law judge to  
27 extend the process up to 30 days if they found there were delays  
28



1 in receiving material, or something. Put that in the hands of  
2 the administrative law judge so that they could manage the  
3 process.

4 SENATOR PETRIS: Sounds reasonable to me.

5 MR. HIRSCH: The time period is close, but it's not  
6 quite right.

7 It seems to me if 30 days after a request is made,  
8 they're supposed to provide and they don't. You then have to  
9 file your motion to compel. They have to respond to it. The  
10 ALJ has to make a ruling. They then have to compel DHS to then  
11 ask U.S. Ecology for the documents, obtain them and provide them  
12 to us, and we have to get them so that we have 30 days in  
13 advance of the hearing to be able to review and compare.

14 So, I think that it's quite appropriate to simply  
15 give the ALJ the authority to extend that time period for good  
16 cause.

17 SENATOR PETRIS: It's in their interest to speed this  
18 up. They'd like to get moving. If there are any delays,  
19 they're not likely to come from the Agency.

20 MS. BRANDT: We're not talking --

21 SENATOR PETRIS: The accusation would be likely to  
22 come from the other side.

23 MS. BRANDT: We're not talking about a formal court  
24 process for compelling discovery.

25 SENATOR PETRIS: Yes, I understand.

26 MS. BRANDT: We're talking about an ALJ who is  
27 dedicated to this proceeding, who is available at all times to  
28



1 assist the parties with the discovery.

2 And I should hope that we do not have to have formal  
3 written motions and counter motions in order to determine  
4 whether a document should have been provided.

5 SENATOR PETRIS: Well, that's why it's important to  
6 get these ground rules firmly established, and then you can go  
7 on good will after that.

8 MR. HIRSCH: Well, it would therefore seem very  
9 appropriate that the ALJ have the authority to extend that time  
10 for good cause.

11 SENATOR PETRIS: They agreed to that; they suggested  
12 it.

13 MR. HIRSCH: They had a specific time period, that he  
14 or she can't give more than a 30-day extension. So, if U.S.  
15 Ecology drags its feet, we're still stuck going to hearing  
16 without having received the documents.

17 SENATOR PETRIS: You're suggesting up to 30 days?

18 MR. HIRSCH: They were.

19 SENATOR PETRIS: What would you --

20 MR. HIRSCH: I think you need one of two things.

21 Simply give the discretion to the ALJ to extend the  
22 time for good cause in discovery disputes --

23 SENATOR PETRIS: For either side.

24 MR. HIRSCH: Oh, yes.

25 Or to say that the hearing begins 30 days after  
26 documents are provided after resolution of discovery disputes.  
27 One way or the other.  
28





1           SENATOR PETRIS: You can live with that, can't you?

2           MS. BRANDT: I have difficulty living with that,  
3 Senator, because I don't --

4           SENATOR PETRIS: I've had difficulty living with this  
5 hearing.

6           MS. BRANDT: I don't know what an ALJ might consider  
7 reasonable under the circumstances, and I think in order to have  
8 an expedited hearing, we need to have the guidelines before the  
9 ALJ as to what is reasonable.

10           I think it is reasonable within 60 days to resolve a  
11 discovery dispute, give people the documents they need, and go  
12 to hearing. Because with a possibility for 30-day extension,  
13 we now have 60 days between the date on which -- the last date  
14 on which the document --

15           CHAIRMAN ROBERTI: Sixty days from the issuance of  
16 the ALJ's --

17           MS. BRANDT: Sixty days between the time the  
18 documents should be provided and the time the hearing can start.

19           So, you have that 60-day period during which to  
20 resolve the discovery dispute, get the documents into the hands  
21 of the people seeking them --

22           CHAIRMAN ROBERTI: What do you have to say about 60  
23 days?

24           MS. BRANDT: -- and get ready for hearing.

25           MR. HIRSCH: I think all of you who are attorneys are  
26 used to the other side providing you documents in response to  
27 discovery the day before the hearing is supposed to begin.  
28



1           SENATOR PETRIS: I was just going to say that.

2           MR. HIRSCH: I mean, I think if you were indeed going  
3 to make these good faith efforts to provide responses quickly  
4 and to obtain them from U.S. Ecology, you should have no  
5 objection to either it being at the discretion of the ALJ, or  
6 saying that the hearing begins within 30 days from the time you  
7 succeed in getting the documents to us.

8           If indeed you say that it should be possible to  
9 expedite quickly, then in fact it would cause no delay.

10          CHAIRMAN ROBERTI: What about 30 days from the time  
11 that the documents get to the requesting party?

12          MS. BRANDT: The problem with that, Senator, is that  
13 there is such a thing as a dispute which the parties never think  
14 is resolved. The ALJ may rule; the parties may come in and ask  
15 for reconsideration. They may not want to be bound by the  
16 decision of the ALJ, and the process can in fact drag out  
17 forever if the parties don't agree that whatever the ALJ says is  
18 correct.

19          That's why I want a time limit that applies: you go  
20 to hearing.

21          CHAIRMAN ROBERTI: I think we all agree with that,  
22 but we are still talking about 30 days from the date that the  
23 documents, according to the ALJ, should have been produced.

24          Everybody's skeptical of everybody else's good faith,  
25 I understand that. That's why we have an ALJ who, hopefully, is  
26 a neutral arbitrator. Somebody has to be the neutral  
27 arbitrator. Certainly not me, I hope.  
28



1 MS. BRANDT: You can be the appellate body, Mr.  
2 Chairman.

3 [Laughter.]

4 MR. GOULD: Senator, I suppose that's reasonable.

5 CHAIRMAN ROBERTI: Okay, thank you.

6 SENATOR MELLO: What was his reply?

7 CHAIRMAN ROBERTI: Thirty days from the date that the  
8 -- the hearing would occur 30 days within the date that the ALJ  
9 says the documents should have been produced.

10 MR. HIRSCH: Not from when they are produced?

11 SENATOR PETRIS: Should be from when they are.

12 MS. BRANDT: May I attempt to rephrase what I think  
13 you were trying to say, Mr. Chairman.

14 Thirty days from the date on which any documents that  
15 the ALJ has ruled must be produced are produced.

16 CHAIRMAN ROBERTI: That's right.

17 SENATOR MELLO: Are produced; they're in your hands.

18 MS. BRANDT: That's correct.

19 CHAIRMAN ROBERTI: Everybody seems to agree to that.  
20 Our Secretary has it down.

21 We've solved that one.

22 We've solved, I think, the issue as to the Director  
23 being the final decision maker.

24 Where are we?

25 MR. HIRSCH: Two more issues, then one last one, I  
26 believe.

27 One is the question of the hearing being on all the  
28





1 disputed issues. My recommendation that those two words be  
2 removed from their draft: "remaining scientific".

3  
4 CHAIRMAN ROBERTI: What do you mean by something  
5 other than a scientific issue?

6 MR. HIRSCH: Past experience of U.S. Ecology, for  
7 example, is not a scientific issue. The -- how do I say it --  
8 the violation history, for example, would not be a scientific  
9 issue.

10 It seems to be unnecessarily limiting. The statement  
11 without it would simply mean issues relating to whether or not a  
12 license should be granted, and that should be sufficient to  
13 contain the issues for the hearing.

14 MS. BRANDT: Would you like me to respond?

15 The difficulty with that proposal is that we are  
16 attempting to craft an adjudicatory hearing, not a public input  
17 hearing. What we've had in the past is a public input hearing,  
18 where if someone wants to tell endless bad stories about U.S.  
19 Ecology, they're free to do so.

20 This is supposed to be a hearing to resolve issues  
21 germane to the licensing decision. The general history of U.S.  
22 Ecology is not germane to that.

23 If there is an issue where U.S. Ecology has been  
24 shown not to know how to run this kind of a site, where U.S.  
25 Ecology does not know how to do a specific thing that they need  
26 to do, I don't have any problem with that issue being addressed,  
27 but it needs to be focused on what is the issue that we are  
28 talking about, not general U.S. Ecology is a bad company or has



1 been in the past.

2 SENATOR PETRIS: Wouldn't the judge determine that?

3 I mean, they're not going to be able to stand up and  
4 say, "Your Honor, this company is crummy, and we think you  
5 should reject the application." That's not going to fly.

6 I think as each specific ingredient of the  
7 qualifications are considered, there'll be information on each  
8 one of those. And if as to one qualification there's some  
9 glaring defect that is specific they could point to, that should  
10 be submitted to the court for consideration; don't you think?

11 MS. BRANDT: The problem is with the order in which  
12 evidence is presented. And the evidence is presented first by  
13 U.S. Ecology in support of the license.

14 Unless we know what the specific issues are under  
15 which U.S. Ecology is to present evidence in its support, they  
16 will not able to put on their case in chief in an effective  
17 manner.

18 That's why we need reasonably limited issues, so that  
19 the company that is expected to go first and produce its  
20 evidence knows that it's producing evidence on.

21 SENATOR PETRIS: I don't understand that. They're  
22 applying for a particular assignment here. And they have to put  
23 their best foot forward and convince the court that they are  
24 qualified to handle this assignment and should be appointed to  
25 be the licensee. So, they put, you know, whatever information  
26 there is that's relevant. It's scientific; it's experience;  
27 it's whatever else fits into that.



1           They don't raise any issues there. They emphasize  
2 the points that will convince the judge that they should  
3 appointed.  
4

5           Now, if there are defects in that, it's up to the  
6 other side that is resisting to raise issues. And then they can  
7 -- the issue's joined, and then the applicant can respond.

8           Isn't that how it would work?

9           MS. BRANDT: I agree with that in general, Senator.  
10 I'm not sure I know how it would work specifically in this  
11 context.

12          MR. HIRSCH: If I may respond for a moment.

13          CHAIRMAN ROBERTI: Please do.

14          MR. HIRSCH: There are standards in state law which  
15 were adopted from the federal regulations as to what the  
16 standards are for issuance of this license. Those are contained  
17 in 10 CFR 61.23. The state has adopted those, and that is  
18 really the subject for the hearing.

19          The first standard is:

20               "The applicant is qualified by  
21 reason of training and experience to  
22 carry out the disposal operations  
23 requested in a manner that protects  
24 health and minimizes danger to life  
25 or property."

26          So, the experience of this company, as to whether  
27 it's adequately carried out other operations, is clearly  
28 relevant.





1                   Additionally, one of the requirements the state  
2 must rule on is whether they're financially qualified.

3                   These other standards here are all the ones that  
4 have to be ruled on, and those are the subject matter for the  
5 hearing.

6                   We have no objection to the Agency's proposal under  
7 Item Three, that the ALJ rule on whether or not the issues of  
8 concern are appropriate for the hearing based on what these  
9 standards are. So, you're not going to raise everything off  
10 the street, but certainly the experience of this company is  
11 central to the question of whether or not the license should be  
12 granted to them.

13                   So, I'm confused as to why, if we have Item Three,  
14 which determines that the ALJ will determine if the issues are  
15 appropriate, and we have standards for issuance of license  
16 which tells us what should be considered, how either their  
17 financial qualifications or their past experience could be  
18 irrelevant to the proceeding.

19                   MR. REMY: If I might add, Senator Petris, I  
20 believe the ALJ will have to make determinations of relevance,  
21 but that's all that really ought to be undertaken here, with  
22 the relevance being determined as to whether or not it has  
23 something to do with whether or not a license should be issued.

24                   But in advance to restrict the inquiry by narrowing  
25 the scope of inquiry, I believe, is what we're objecting to.  
26 And it would be cured by essentially removing the two words,  
27 "remaining scientific".  
28



1 Is this issue resolved?

2 CHAIRMAN ROBERTI: The attorney had indicated,  
3 however, that some aspects -- the aspects of a licensee's  
4 ability to perform would come before the ALJ as part -- and  
5 they agree that these issues can come forward.

6 MR. HIRSCH: Some of them. Those that relate to  
7 scientific matters could.

8 I would presume that would not include, in their  
9 interpretation, financial qualifications, for example.

10 CHAIRMAN ROBERTI: What about financial  
11 qualifications?

12 MS. BRANDT: I'm sorry, Senator?

13 CHAIRMAN ROBERTI: What about financial  
14 qualifications?

15 MS. BRANDT: As the proposal is written, the  
16 strictly financial qualifications are not included.

17 And again, we are talking about a 60-day hearing.  
18 And what we understood the public to want was a hearing on the  
19 the scientific issues -- the tritium, the liner -- things  
20 relating to health and safety; not things relating to finances.

21 CHAIRMAN ROBERTI: That is more within the scope of  
22 my concern.

23 Now, I know finances are important, but I don't  
24 think they're going to be conclusive as to --

25 MR. HIRSCH: No, I just don't know why those -- I  
26 mean, we can't give you all the examples now --

27 CHAIRMAN ROBERTI: I'm more concerned about the  
28



1 word "remaining" than I am about the word "scientific".

2 I mean, frankly, the main reason why I'm here today  
3 is over the scientific. The whole aura of scientific  
4 questions, including seepage, leakage, or --

5 MR. HIRSCH: Senator, and I think --

6 CHAIRMAN ROBERTI: Financial, I don't know -- I may  
7 want some help from some of my colleagues -- but financial  
8 doesn't strike me --

9 MR. HIRSCH: There's two things. One thing that  
10 has concerned this state very much is the potential liability.  
11 There is this concern that this company, if it doesn't have  
12 sufficient resources, if it abandons this site the way it  
13 abandoned Sheffield, would -- the state would be stuck with  
14 enormous expense of having to remedy the situation.

15 CHAIRMAN ROBERTI: What about the liability  
16 question?

17 MS. BRANDT: Senator, if I may be allowed to act as  
18 Mr. Gould's attorney in a different capacity for a moment.

19 CHAIRMAN ROBERTI: Yes.

20 MS. BRANDT: We are about to have him not confirmed  
21 simply because we're carrying this conversation on until the  
22 Members are gone, and I would ask this Committee to please act.

23 CHAIRMAN ROBERTI: We will make sure that they come  
24 back. This is very important.

25 If Members want to leave because this is going on,  
26 I mean, we all have obligations to be here. And we have to  
27 hear these.  
28





1                   And I'm not talking to you. I'm talking to you and  
2 the Members.

3                   These are important questions, and they're detailed  
4 questions. And I'm not going to be rushed -- I'd love to be  
5 rushed. I mean, the hearing's not fun. I'd rather have lunch.

6                   But we have to hear these issues out. It's  
7 terribly important.

8                   I know some Members have said, "I've got to leave.  
9 I've got to catch a plane." What in the world are we here for?  
10 I mean, this is an important issue.

11                   I'm not lecturing you. I'm lecturing some of my  
12 colleagues who have been bugging me about when they can catch  
13 the next plane out.

14                   We'll bring them all back.

15                   MS. BRANDT: I think it may be very difficult to  
16 resolve within any reasonable time frame the question of do we  
17 need to have a hearing that is going to address all conceivable  
18 issues, including those that have been addressed before,  
19 including those that don't relate to health and safety, which  
20 the NRC has told us normally takes a minimum of a year-and-a-  
21 half and a maximum of five years, and on the average two years  
22 and more. And I can't conceive of this one taking any less  
23 time.

24                   Or are we going to have a hearing that is limited  
25 in time, that is limited in scope, and that addresses the  
26 fundamental health and safety issues that I thought were of  
27 concern to this body?  
28



1 I think that is the fundamental difference between  
2 the parties. And I'm not sure talking about that difference  
3 helps to resolve it.

4 MR. GOULD: Senator, going issue by issue, I'm not  
5 going to be able to give you an answer.

6 If the Governor committed to you to work with you  
7 on this, and it wasn't an issue that was tied to confirmation  
8 or the timing of it, I think he committed to you because he  
9 felt it was an appropriate process. So, I'm not sure I'm going  
10 to close down that issue by --

11 CHAIRMAN ROBERTI: It is an appropriate process,  
12 and I remember my conversations with the Governor very  
13 distinctly.

14 However, the question still before us is the word  
15 "remaining", and I don't know what that means.

16 MR. GOULD: Senator, I think the effort was just to  
17 not bring up issues that are resolved. You know, we were  
18 trying to say, "Look, in narrowing the scope, let's focus on  
19 the issues."

20 I think through the hearings we have had to date  
21 regarding my confirmation, there have been issues cited as  
22 being issues that are outstanding. Let's deal with those  
23 issues. Let's not start all over again on every issue out  
24 there.

25 MR. HIRSCH: If I could make a suggestion there?

26 If that's the case, simply substitute for the words  
27 "remaining scientific", the word "disputed". If it's issues  
28



1 that you say have already been resolved that no one disputes,  
2 I have not problem with those being kept out. But if there are  
3 disputed issues relevant to the issuance of the license, those  
4 should be dealt with.

5 So how about simply taking "remaining scientific"  
6 out and putting in "disputed" issues?

7 MS. BRANDT: If I could believe in the good faith  
8 of everyone who will participate in the hearing, in spite of  
9 the fact no one is willing to believe in my good faith, I  
10 wouldn't have a problem with that.

11 Unfortunately, the minute you have no limitation on  
12 the issues, it leaves the door open to a potentially unlimited,  
13 unclosable process where we go on for years.

14 MR. HIRSCH: I guess my concern is, this waste  
15 lasts for thousands of generations. If we don't resolve all  
16 the important disputed issues before we start dumping the  
17 waste, we would have made an irreversible mistake.

18 That's what I thought this was all about, to come  
19 up with a process to resolve all of those important disputed  
20 matters.

21 I can't see how it's to our advantage to say,  
22 "Okay, we'll resolve only a third of them."

23 CHAIRMAN ROBERTI: So the issue is the Agency is  
24 willing to discuss -- to confine it to disputed, but there's a  
25 lack of trust between the parties as to what disputed means.

26 MR. GOULD: Senator, I would agree to continue to  
27 talk about that area. I couldn't agree to a change in that  
28





1 area.

2 I think the Governor was pretty clear in his  
3 instructions to me in terms of making sure we had a manageable  
4 process, and I think it was the same discussion he had with  
5 you.

6 So, I don't feel at liberty, really, to change  
7 that.

8 CHAIRMAN ROBERTI: I tend to think that the word  
9 "remaining" is confining.

10 The issue of liability is a question which really  
11 broadens our scope here, which I'd rather not do. But I think  
12 the issue of scientific issues are things that our hearings  
13 have tried to zero in on.

14 MR. HIRSCH: If I could make an inquiry.

15 CHAIRMAN ROBERTI: Yes.

16 MR. HIRSCH: I gather that if there is something  
17 that gets worked out shortly, an ALJ will have to review the  
18 transcript of this proceeding to see what we meant by these  
19 words.

20 I'd like to inquire, did I hear correctly that it  
21 is the understanding that the term "scientific issues" would  
22 include the compliance record, the history, of this applicant  
23 at its other facilities?

24 I want to make sure I understand that, because that  
25 seems absolutely central to the issue of whether the license  
26 should be granted.

27 MS. BRANDT: The statement I have made said that  
28



1 insofar as the compliance history relates directly to an issue  
2 that is legitimately involved in the construction of the site,  
3 yes. General compliance history, no.

4 SENATOR PETRIS: Of this site?

5 MS. BRANDT: Of this site.

6 SENATOR PETRIS: So anything done on another site  
7 is irrelevant?

8 MS. BRANDT: No, what I'm saying is, to the extent  
9 what they did at another site is relevant to their ability to  
10 construct this site --

11 SENATOR PETRIS: I think the judge would make the  
12 same ruling. I just think that's what the judge would do.

13 CHAIRMAN ROBERTI: There's no reason to look into  
14 another site unless it is relevant to our site.

15 MR. REMY: If I may point out, the Supreme Court of  
16 California has indicated that performance by an applicant at  
17 other sites is relevant to their ability to meet the required  
18 conditions on mitigation measures.

19 So, in a sense, the courts have already established  
20 that that is relevant to the inquiry of whether or not the  
21 applicant can perform.

22 SENATOR PETRIS: Well, I don't see how that could  
23 be kept out if you cite those cases before the --

24 MR. REMY: But I just heard an effort to keep it  
25 out.

26 MS. BRANDT: I'll repeat what I said.

27 I don't have a problem with it being admitted to  
28



1 the extent it is relevant to something at this site.

2 I just have a problem with making some sort of  
3 general commitment that anything in the history of this  
4 licensee is going to be considered germane. I don't agree to  
5 that.

6 SENATOR PETRIS: I don't think the judge would  
7 agree to it, either.

8 CHAIRMAN ROBERTI: Nor would I, and I agree with  
9 Senator Petris, nor would the judge.

10 We're just talking about those aspects of prior  
11 history that are relevant to this site.

12 SENATOR PETRIS: That's right.

13 CHAIRMAN ROBERTI: I will take it that everybody  
14 agrees to that.

15 MR. REMY: I think the determination of relevance,  
16 again, is one that needs to be made --

17 CHAIRMAN ROBERTI: That's got to be decided by the  
18 ALJ. We obviously cannot -- I mean, we're far afield if we try  
19 to define that word here today.

20 Any other problems?

21 MR. HIRSCH: I've got two remaining ones.

22 CHAIRMAN ROBERTI: You get a short --

23 SENATOR BEVERLY: It's always two. It was two a  
24 moment ago, and it's two again.

25 CHAIRMAN ROBERTI: He gets a short amount of time  
26 to do it.

27 MR. HIRSCH: I want to just confirm that the ALJ is  
28





1 permitted and is in fact authorized to make findings of fact  
2 and conclusions of law. That the Director has discretion to do  
3 what she wishes about that, but that the judgment to be made is  
4 both the findings of fact and conclusions of law.

5 MS. BRANDT: I cannot agree to that, Mr. Chairman,  
6 because of what I indicated earlier.

7 The record of this hearing will not be the entire  
8 administrative record. I don't see how the ALJ can make  
9 conclusions of law on the final issues before the Director when  
10 this ALJ is only reviewing this hearing and not the record of  
11 the previous hearings as well. And that goes back to the  
12 limited scope of the hearing.

13 MR. GOULD: And I think those are issues we've  
14 addressed.

15 CHAIRMAN ROBERTI: No, you can't have conclusions  
16 of law unless you've reviewed the entire --

17 MS. BRANDT: That's why the language that we've  
18 used in the proposal is that the administrative law judge will  
19 write a written analysis of how the facts found relate to those  
20 issues which by law the Director must address. That is as  
21 close as I can come in this procedure to having conclusions of  
22 law. It's not a formal conclusion of law, but it's a  
23 discussion of what a conclusion would look like.

24 MR. HIRSCH: What we are asking for is that the ALJ  
25 make findings of fact and conclusions of law based on the  
26 record before him or her.

27 We are willing to accept, although we disagree with  
28



1 it and reserve our right to oppose it in court, the ability of  
2 the Director to rely on extra record material. But we are no  
3 way at the moment indicating that -- the solution being  
4 proposed is that she will do that, we can challenge that later.  
5 But the ALJ, who will hear evidence that's been subject to  
6 cross examination and rebuttal, should be permitted not merely  
7 to findings of fact, but determine whether or not, based on  
8 that record, this company meets the standards for issuance of a  
9 license.

10 Dr. Coye can overturn that and ignore it, but that  
11 should be what this is about. Otherwise, it has not meaning.

12 CHAIRMAN ROBERTI: I misunderstood your last  
13 paragraph.

14 MR. HIRSCH: The final conclusions of law will be  
15 made by Director Coye, and according to their method, based on  
16 this record and extra record material.

17 We object to that, but if that is the comprise  
18 that's worked out here, that's how it will be and we would then  
19 challenge its legality later.

20 MS. BRANDT: Mr. Chairman, I'm very hesitant to  
21 interrupt Mr. Hirsch, but he is making a fundamental  
22 misrepresentation.

23 We have never, ever stated that Dr. Coye would use  
24 material beyond the record.

25 What we have said is that Dr. Coye would use  
26 material both from this record and from the record that has  
27 already been made in the earlier public record hearings.  
28



1 CHAIRMAN ROBERTI: You're stipulating to that.

2 MR. HIRSCH: I disagree with it as a matter, but in  
3 terms of the compromise here, I say fine, let them do that.

4 CHAIRMAN ROBERTI: Very good.

5 And Dr. Coye makes her decision based on the record  
6 that --

7 MR. HIRSCH: Whatever record she wants to look at.

8 CHAIRMAN ROBERTI: -- that she has. And you're  
9 free to challenge it.

10 MR. HIRSCH: Right.

11 My point is that the ALJ should be free to make his  
12 or her conclusions of law and findings of fact based on the  
13 record before that ALJ. That's relevant -- I mean, if we --

14 SENATOR PETRIS: The Director will be free to look  
15 at the --

16 CHAIRMAN ROBERTI: The Director has to look at the  
17 complete, will look at the complete record.

18 MR. HIRSCH: That's right, but we would like the  
19 ALJ to draw conclusions from the facts. We don't understand  
20 what the hearing's about otherwise.

21 MS. BRANDT: I think that's what the proposal says,  
22 Mr. Chairman.

23 CHAIRMAN ROBERTI: I think we're all in agreement.

24 MR. HIRSCH: That the ALJ can issue conclusions of  
25 law.

26 CHAIRMAN ROBERTI: No, not that the ALJ can issue;  
27 that the Director can issue conclusions of law.  
28





1 MR. HIRSCH: And the ALJ cannot.

2 CHAIRMAN ROBERTI: The ALJ cannot because the ALJ  
3 only looks at the truncated record.  
4

5 MR. HIRSCH: Cannot issue conclusions of law based  
6 on that record, and then Dr. Coye can make her conclusions of  
7 law based on a larger record?

8 SENATOR PETRIS: It'll be limited.

9 CHAIRMAN ROBERTI: That doesn't cause me a problem.

10 MS. BRANDT: I think that would be extremely  
11 prejudicial, Mr. Chairman.

12 MR. HIRSCH: That's the point, I guess.

13 If the judge has sat through a six-month  
14 proceeding, and heard witness after witness, cross examination,  
15 rebuttal, all the stuff that Dr. Coye will not hear, and then  
16 makes conclusions of fact [sic], and can't then say, "Based on  
17 this fact, I think this dump should go or not," what is the  
18 purpose of this?

19 MS. BRANDT: This proposal makes it perfectly clear  
20 that the ALJ can do that. We just don't call them conclusions  
21 of law.

22 SENATOR PETRIS: What do you call them?

23 MS. BRANDT: I read the language earlier:

24 "... a written analysis of how the  
25 facts found relate to those issues  
26 which, by law, the Director must  
27 address ...."

28 That's about as close to a conclusion of law as you can have



1 without calling it one, Senator Petris.

2 SENATOR PETRIS: Well, if you're that close, why  
3 don't you just call it that? What's the harm?

4 MS. BRANDT: Because I think there would be  
5 substantial prejudice in calling it that when in fact the ALJ  
6 does not have the entire record.

7 MR. HIRSCH: May I make a quick suggestion?

8 CHAIRMAN ROBERTI: Yes.

9 MR. HIRSCH: The statement actually says that the  
10 ALJ shall submit findings of fact and, and then goes on written  
11 analysis, and the Director then is going to do something.

12 Why not simply say that the ALJ submits findings of  
13 fact and conclusions of law, and then the Director makes up her  
14 mind as to what to do --

15 CHAIRMAN ROBERTI: They don't want to use the words  
16 "conclusions of law". We're at an impasse there. They want to  
17 use a paragraph.

18 Why can't we use something -- why can't we call it  
19 what you're saying, and then put, colon, "analysis of law"?

20 MR. REMY: Legal recommendations.

21 CHAIRMAN ROBERTI: So we don't use the words  
22 "conclusions of law".

23 MS. BRANDT: Would you repeat your proposal, Mr.  
24 Chairman?

25 CHAIRMAN ROBERTI: Your paragraph, put a colon  
26 after your paragraph, something "to wit: an analysis of law".

27 MS. BRANDT: That's already in there.  
28



1           SENATOR PETRIS: It's already in there.

2           CHAIRMAN ROBERTI: I know. You give it a briefer  
3 definition so that in any briefs that are filed, you can use  
4 the words "analysis of law".

5           MS. BRANDT: I have no problem with that.

6           CHAIRMAN ROBERTI: It sounds more formal.

7           MS. BRANDT: Fine.

8           MR. REMY: Yes.

9           CHAIRMAN ROBERTI: No problem, no problem. Fine,  
10 okay.

11          MR. HIRSCH: I think we're okay on that.

12          I believe the fundamental purpose of this is to  
13 have a proceeding where the outcome is not preordained; where  
14 there is an independent, fair, neutral trier of fact.

15          We understand that Dr. Coye can overturn or ignore  
16 those determinations, but that this proceedings be before an  
17 independent, unbiased, trier of fact.

18          And it seems to us very important that the  
19 Legislature be involved in discussions with the Agency to make  
20 sure that that trier of fact is someone that's essentially  
21 acceptable to both, that would provide confidence in the  
22 outcome.

23          SENATOR PETRIS: Do you know of any that are not  
24 acceptable?

25          MR. HIRSCH: Individuals?

26          SENATOR PETRIS: Not individuals out there in the  
27 world, but from a panel of administrative law judges?  
28





1 MR. HIRSCH: Well, we think that it may be useful  
2 to have someone who's not an employee of the State of  
3 California, given how this is so politicized within the state,  
4 and that it may be useful for some effort to be made, you and  
5 the Agency jointly, to come up with that independent person.

6 MS. BRANDT: Mr. Chairman, the Agency has given  
7 considerable thought to the idea that it should be someone  
8 employed not by the State of California.

9 The problem with making a commitment on that now is  
10 that we don't know what's available, and we don't know what can  
11 be done in terms of getting someone within the time-frame.

12 We will make every effort to get a very neutral --

13 CHAIRMAN ROBERTI: I tend to agree it's best out of  
14 the state, but it's difficult.

15 MR. HIRSCH: May we suggest the following: simply  
16 a commitment of the Agency to consult with the leadership of  
17 the Legislature on the ALJ?

18 CHAIRMAN ROBERTI: Our advice and counsel, but the  
19 decision is still yours.

20 MR. GOULD: That's satisfactory.

21 CHAIRMAN ROBERTI: Thank you.

22 I think we have gone through everything. This is  
23 on tape. It would be impossible to put all the agreements to  
24 paper before we take up Mr. Gould.

25 Consequently, I'm going to ask the transcript be  
26 written. Assuming we're all men and women of good faith, we  
27 will adjust to those transcripts.  
28



1 I think a motion on Mr. Gould now is appropriate.

2 SENATOR MELLO: Mr. Chairman, before a motion is  
3 made, my understanding is, we have not modified the term  
4 "remaining" or "scientific"; is that correct?

5 MR. REMY: No, we haven't.

6 MS. BRANDT: That's correct, Senator.

7 SENATOR MELLO: Mr. Chairman, my understanding is  
8 that we have not modified the term "remaining" in the first  
9 opening paragraph, "remaining scientific issues", where  
10 Mr. Hirsch is advocating that we remove the word "remaining  
11 scientific" and enclose "disputed issues".

12 Is that not acceptable to the Agency?

13 MS. BRANDT: That is not acceptable, Senator.

14 I could propose to change the word "remaining" to  
15 "significant", which was what we had intended. I don't know  
16 that that would be any more pleasant for the proponents.

17 SENATOR MELLO: That has not been resolved; is that  
18 correct?

19 SENATOR PETRIS: How about "relevant"? Let the  
20 judge decide --

21 MS. BRANDT: That's -- the problem then is, you  
22 can't limit the hearing at all in time, because that allows a  
23 complete rehearing of everything that's already been heard,  
24 whether or not it is still in significant dispute. And that  
25 allows endless delay and foot-dragging by people who just wish  
26 to do that.

27 MR. HIRSCH: If I may make a suggestion.  
28



1           Then let us call it "significant disputed issues",  
2 so that the tiny, insignificant matters that you are worried  
3 about would not be raised, but that any significant issue  
4 relevant to the issuance of this license would be able to be  
5 discussed.

6           SENATOR PETRIS: Well, now you've got one word from  
7 each of you.

8           MR. HIRSCH: Solomon would be happy.

9           MR. GOULD: I'm afraid it just expands the scope.  
10 And, you know, one of the commitments we had in trying to work  
11 this out was to keep the parameters within a reasonable time-  
12 frame. I'm afraid that it just begs that.

13           MR. HIRSCH: And the fundamental thing that the  
14 Committee has been trying to do is make sure there's a process  
15 where the significant issues about this facility get resolved  
16 prior to taking an irreversible action.

17           MR. GOULD: That's also the commitment the Governor  
18 has made.

19           SENATOR PETRIS: I have a suggestion.

20           I'd like to see "dispute" in there, but an issue,  
21 by definition, is something in dispute.

22           Counsel, you just said "significant issues". Are  
23 you suggesting issues -- an issue isn't an issue unless there's  
24 two sides to it. So by definition, you're saying "disputed".

25           If it's agreed upon, it's not an issue anymore;  
26 isn't that true?

27           MR. REMY: Yes.  
28





1           SENATOR PETRIS: So why don't we accept their  
2 recommendation of "significant" issues?

3           MS. BRANDT: We still have a dispute about whether  
4 or not to remove the word "scientific", to try to get back to  
5 the liability and all of those issues.

6           CHAIRMAN ROBERTI: What did you say? I missed what  
7 you said.

8           MS. BRANDT: I thought we had reached agreement  
9 that those nonscientific issues would not be covered by this  
10 hearing. I think we're going over ground that --

11          MR. GOULD: I thought we had concluded, maybe I'm  
12 wrong, that "scientific" remained in there, and we just  
13 discussed what the elements were within "scientific", and  
14 recognize that it was broader and -- in terms of its  
15 application. And I thought that was a resolved issue.

16          SENATOR PETRIS: I thought when we had a reading of  
17 the extract from the law, that it wasn't limited just to that.  
18 It covers some of the other things, like by training, by  
19 statute.

20          MR. HIRSCH: Why don't we then refer to those  
21 standards of --

22          SENATOR PETRIS: Just use the code.

23          MS. BRANDT: I don't deny that those issues are  
24 material to the licensing decision.

25          The point of this process was to deal with  
26 scientific, health and safety issues, not with the liability,  
27 not with the financial condition of the company.  
28



1           There have been ample public hearings to deal with  
2 those. And those are not the crucial issues that I thought  
3 this Committee was worried about.

4           MR. HIRSCH: What you've just heard is a statement  
5 that there are other material issues for the issuance of the  
6 license that the Agency wishes to exclude from resolution by  
7 the adjudicatory proceeding.

8           It seems to me that the fundamental --

9           CHAIRMAN ROBERTI: How about "scientific and  
10 remaining disputed issues", or "remaining significant disputed  
11 issues"? So we do not re-open any other disputed issue.

12          MS. BRANDT: I think that does everything they  
13 want, Senator. I don't think that limits it in the slightest.

14          In their opinion, it is a significant remaining  
15 disputed issue whether or not there will be liability on the  
16 state, whether or not U.S. Ecology has enough money to last 30  
17 years.

18          I'm not free to agree that those issues will be  
19 heard in this hearing. The hearing could not be held within  
20 this time-frame.

21          MR. HIRSCH: If I may ask, an inquiry?

22          I understood there was a Legislative Counsel's  
23 opinion that an adjudicatory hearing is required for the  
24 issuance of a license. If that's true, then it's required on  
25 the issues material to the issuance of the license. And  
26 therefore, it's required to deal with all of the material  
27 issues that are part of the standards for the issuance of the  
28



1 license.

2 Isn't that where we are? Why we're here?

3 CHAIRMAN ROBERTI: That's why we're here, yes.

4 SENATOR BEVERLY: That's only part of it, Mr.

5 Chairman. If I may make a comment.

6 Leg. Counsel says an adjudicatory hearing is  
7 necessary. Counsel for the Department disagrees with that.

8 We're trying to come somewhere in between those two  
9 people.

10 It seems to me they've made a good faith effort --  
11 I'm not accusing you of bad faith -- but I wonder if you really  
12 want to resolve this issue.

13 MR. HIRSCH: I'm trying, and I believe by our  
14 willingness --

15 SENATOR BEVERLY: I'll accept that, but it's got to  
16 happen soon.

17 CHAIRMAN ROBERTI: If it doesn't happen soon, the  
18 whole thing becomes moot.

19 I'm inclined to go with "scientific issues".

20 MR. HIRSCH: Just -- if that's done --

21 SENATOR CRAVEN: Mr. Chairman, why don't we do that  
22 and let the good guys win one?

23 MR. REMY: I think the proposal that, at least I  
24 thought, was now being considered was "and remaining disputed  
25 issues".

26 MS. BRANDT: That has been rejected by us. It's  
27 not under consideration at this end of the table.  
28





1 MR. HIRSCH: See, my problem becomes, I can't  
2 conceive of how an ALJ is going to know whether or not the  
3 violation history at another site is relevant to a scientific  
4 issue associated with Ward Valley. And I do think that that is  
5 absolutely a critical matter.

6 CHAIRMAN ROBERTI: Violation issue, I don't quite  
7 understand?

8 MR. HIRSCH: The compliance history of the company  
9 with regulations at the other sites that it's operated, I don't  
10 understand how an ALJ will be able to say, "Yes, that is  
11 relevant to a scientific issue associated with Ward Valley".

12 Whereas, it's clearly one of the very central  
13 questions as to whether or not this license should issue and  
14 the facility can be operated safely.

15 MS. BRANDT: Mr. Chairman, again, I think you've  
16 heard all the arguments on this issue.

17 CHAIRMAN ROBERTI: I don't want to preclude the  
18 operation of the site safety. That has to be part of this.

19 MR. HIRSCH: Why don't we do that, then?  
20 "Significant issues related to safety".

21 CHAIRMAN ROBERTI: "Scientific and safety issues".

22 MS. BRANDT: That's not a problem.

23 MR. HIRSCH: That's with the understanding that he  
24 violation history would --

25 MS. BRANDT: That's with the understanding that the  
26 violation history, to the extent it is relevant and material to  
27 those issues, will be legitimate.  
28



1 CHAIRMAN ROBERTI: Or "scientific or safety  
2 issues".

3 MS. BRANDT: All right.

4 CHAIRMAN ROBERTI: Okay.

5 SENATOR CRAVEN: Move Mr. Gould.

6 CHAIRMAN ROBERTI: Senator Craven moves the  
7 confirmation of Russell Gould as Secretary of the Agency --

8 SENATOR MELLO: On the motion, Mr. Chairman.

9 CHAIRMAN ROBERTI: -- of Health and Welfare.

10 And Senator Mello on the motion.

11 SENATOR MELLO: I think we're acting because the  
12 clock keeps rolling. And I'm concerned about, we've reached a  
13 lot of agreement here today, and I congratulate both sides for  
14 moving to try to resolve this issue.

15 Senator Beverly says that our Legislative Counsel's  
16 opinion was put forth, and then the attorney for the Department  
17 came forth with her effort, a good faith effort, but she  
18 submitted no written opinion saying that our opinion from our  
19 Department was flawed.

20 What I'm concerned about, Mr. Chairman, is that  
21 this goes on the Floor. Mr. Gould is passed out.

22 What I was hoping for was that we'd get these  
23 amended, proposed proposals in writing so that we could put  
24 them in the file and print them in the Journal.

25 I know time is short --

26 CHAIRMAN ROBERTI: I agree. I'd love to do that,  
27 but I mean, it's impossible.  
28



1           The reason why we've reached any kind of a  
2 narrowing of the path is that we're working with a deadline.  
3 Unfortunately, if we do that, Mr. Gould will be deadlined.

4           SENATOR MELLO: What I would hope --

5           CHAIRMAN ROBERTI: The best I can say is, we're  
6 dealing with parties of good faith, and fortunately or  
7 unfortunately for Dr. Coye, she's still around.

8           I'm sorry to have made that observation, but that's  
9 reality.

10          SENATOR MELLO: Mr. Chairman, on that point, may I  
11 ask, then, that the Rules Committee be presented from Mr. Gould  
12 a modified version of you proposal as agreed to here today so  
13 it could be printed in the Journal, and then Mr. Hirsch, if  
14 your side would present a written modified version from your  
15 perspective to be printed in the Journal. At least we'd have  
16 both.

17          I don't expect them to be agreeable to both sides,  
18 but I think it's going to come back --

19          SENATOR CRAVEN: Isn't that all part of the record  
20 now, Henry?

21          SENATOR PETRIS: They're both the same. The way  
22 they come out now, they both should be the same.

23          MS. BRANDT: I hope they will both be the same.

24          Mr. Chairman, given that I have not had a lot of  
25 sleep in the last 48 hours, I would ask that I be given a  
26 transcript of this hearing before I'm asked to produce a  
27 modified version.  
28





1 MR. HIRSCH: We would also.

2 CHAIRMAN ROBERTI: I think that's only fair for all  
3 sides.

4 SENATOR PETRIS: We can have it printed in the  
5 Journal later.

6 CHAIRMAN ROBERTI: We have a transcript; it's just  
7 nobody can read it.

8 COURT REPORTER: I beg your pardon?

9 [Laughter.]

10 CHAIRMAN ROBERTI: I'm sorry, my apologies.

11 MS. BRANDT: Will the Chair accept an amendment  
12 that only expert court reporters can read it.

13 CHAIRMAN ROBERTI: Absolutely.

14 SENATOR CRAVEN: Mr. Chairman, may I call for the  
15 question?

16 CHAIRMAN ROBERTI: Yes, the question's before us.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello.

22 SENATOR MELLO: No.

23 SECRETARY WEBB: Mello No.

24 Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye.

27 Senator Craven.  
28



1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Craven Aye.

3 Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 SECRETARY WEBB: Roberti Aye.

6 CHAIRMAN ROBERTI: The vote is four to one;  
7 confirmation is recommended to the Floor.

8 Congratulations.

9 [Thereupon this portion of the  
10 Senate Rules Committee hearing  
11 was terminated at approximately  
12 2:15 P.M.]

13 --oo0oo--  
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of April, 1992.

  
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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

SENATOR HENRY MELLO

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CLIFF BERG, Executive Officer

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INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
DONALD J. VALPREDO, Member California Horse Racing Board	1
Background and Experience	1
Questions by CHAIRMAN ROBERTI re:	
Participation of Minorities	1
Union Contracts at Satellite Facilities	2
<u>Witnesses with Concerns:</u>	
MAURA KEALEY, Legislative Advocate Service Employees International Union	3
State Law Requirement of Contract	3
RUDOLFO AROS, Attorney Sacramento	4
Lack of Minority Stewards	4
Consideration of Ex-jockeys for Steward Appointments	5
Questions by SENATOR PETRIS re:	
Lack of Grievance Procedure	5
Senate's Understanding of Union Procedures when Satellite Wagering Facilities Were First Established in State	6
Attorney General's Opinion	7
Statements by SENATOR MELLO re:	
Lack of Ethnic and Gender Balance on Board	8
Motion to Confirm	9
Committee Action	10



1		
2	MOLLY COYE, M.D., Director	
3	Department of Health Services	10
4	Introduction by SENATOR MARIAN BERGESON	10
5	Letter in Support from Women's Legislative	
6	Caucus	11
7	Introduction by SENATOR REBECCA MORGAN	11
8	Educational and Training Background	12
9	Work for Oil Chemical Atomic Workers Union	13
10	Internship and Residency	13
11	Experience	13
12	Founding of Occupational Health Clinic	
13	at San Francisco General Hospital	13
14	Medical Officer for National Institute of	
15	Occupational Safety and Health	13
16	Experience in New Jersey	14
17	Professional Activities	14
18	Goals for Department	15
19	Need to Balance Demands with Fewer Resources	16
20	Prevention as Key Building Block	16
21	Expansion of Access to Health Care	17
22	Streamlining and Consolidating Services	17
23	Statements by SENATOR MELLO re:	
24	Draft Response on Ward Valley Adjudicatory	
25	Hearing	18
26	Legislative Counsel and Opposition	
27	Requesting Time to Evaluate Department's	
28	Response	18
	Question on Hearing Procedure	18
	Discussion	18



Witnesses in Support:

DOUG HITCHCOCK, Legislative Advocate California Association of Hospitals and Health Systems	20
DENNIS FLATT, Legislative Advocate Kaiser Permanente	21
MARK DIAZ, M.D. Chicano Latino Medical Association of California	21
Meetings with Various Coalitions	22
Support for Preventative Medicine Initiatives	22
BIRT HARVEY, M.D., Former President American Academy of Pediatrics	23
Appointee's Work as Health Commissioner in New Jersey	23
Health Start Program	24
New Jersey Moms	25
Practical Innovations	26
Questions by SENATOR PETRIS re:	
Reduction of Prevention Activities, i.e., Cancer Registry and Prop. 99 Transfer	27
Expression of Displeasure over Transfer of Funds	28
CARL SMITH, President California Conference of Local Health Officers	29
Appointee's Willingness to Work with CCLHO on Public Health Issues	29
Qualifications and Experience	29
Support from Alameda County Health Care Services Agency	30
Questions by SENATOR PETRIS re:	
Work with Lung Association	30
Department's Cancellation of Contract	31





1		
2	Cancellation Due to Retribution for Lawsuit	31
3		
4	Transfer of Monies Out of Prop. 99 Education Campaign Fund	31
5	OPHELIA LONG, Director/CEO Highland General Hospital	
6	California Association of Public Hospitals	33
7	Positive Leadership and Vision	33
8	Support for Various Programs	34
9	SISTER ELIZABETH JOSEPH KEAVENEY, President/CEO St. Francis Medical Center	
10	Lynwood, California	35
11	Commitment to Access to Health Care	35
12	Commitment to Prevention	36
13	PAT SALBER, M.D., President-Elect California Chapter	
14	American College of Emergency Physicians	37
15	Emergency Departments as Source of Primary Care	37
16	Interest in Prevention	38
17	HODA ANTON-CULVER, Ph.D., Director Epidemiology, U.C. Irvine	
18	Cancer Surveillance Program of Orange County	39
19	Background	39
20	Cancer Surveillance Program and Cancer Registry	40
21	Going after Federal Funds for Cancer Research, Control and Prevention	41
22	Urge Confirmation	41
23	Questions by SENATOR MELLO re:	
24	Relationship between Smoking and Cancer	42
25		
26		
27		
28		



1		
2	Feelings on Department's Transfer	
3	of Money from Prop. 99	42
4	Innovative Solutions to Save	
5	Needed Projects	43
6	Communication to Governor or Director	
7	Over Transfer of Funds	44
8	JOYCE LASHOF, M.D., Dean Emerita	
9	School of Public Health	
10	U.C. Berkeley	46
11	Director's Unique Qualifications	46
12	Primary Focus is Access to Care	47
13	Urge Confirmation	47
14	Letter from DR. LESTER BRESLAU, Former Dean	
15	School of Public Health, U.C.L.A.	48
16	JOHN DUNN-MORTIMER	
17	AIDS Project Los Angeles	49
18	Two Budget Neutral Programs	49
19	Subsidization of Health Insurance	
20	Premiums	49
21	Home Health Care	49
22	Partnership with Private Nonprofit	
23	Organizations	50
24	Urge Confirmation	50
25	HELYNE MESHAR	
26	AIDS Project West Hollywood	51
27	City's Unique Population	51
28	Support for Confirmation	51
	Adult Day Health Care Program	51
	LAURIE McBRIDE, Executive Director	
	LIFE AIDS Lobby	52
	Support for Confirmation	52
	Commitment to Community Involvement	53



1		
2	Access to Ryan White Care Act Funds	53
3	HIV Consortia	53
4	BRENT BARNHART, Legislative Advocate	
5	Blue Cross of California	55
6	Director's Work and Involvement with	
7	Large Private Insurance Companies	55
8	Support for Confirmation	55
9	BETH CAPELL, Legislative Advocate	
10	California Nurses Association	56
11	Urge Confirmation	56
12	Support for Central Role of Nursing	56
13	Statement by CHAIRMAN ROBERTI re:	
14	Support Letters from Health Net and	
15	California Association of HMOs	56
16	<u>Witnesses with Concerns:</u>	
17	ARNOLDO TORRES, Legislative Advocate	
18	California Hispanic Health Care Association	57
19	Concern with 10/27/91 Interview in	
20	<u>Los Angeles Times</u>	57
21	Concerns Association Had Up Until February	58
22	Lack of Association's Involvement in	
23	Consultation Process	58
24	Concern with Outreach Programs	58
25	Since February, More Open Dialogue with	
26	Department	59
27	Commitment to Farmworkers	59
28	Desire of Association to Contribute and	
	Participate in Decisions of Department	61
	Questions by SENATOR MELLO re:	
	Need for Flexible Hours in Clinics	
	Serving Farmworkers	62





1		
2	Need for Outreach Program to Inventory	
3	Family Health Needs	63
4	AIDS in Farmworker Population	64
5	Questions by SENATOR PETRIS re:	
6	Problems with Discrimination or Affirmative	
7	Action in Department	65
8	Lawsuits by Black Employees	66
9	DIAN KISER, Legislative Advocate	
10	American Heart Association	67
11	Respect for Director's Credentials	67
12	Refusal to Sign Media Contract under	
13	Proposition 99	67
14	Cancellation of Contract with American	
15	Lung Association	68
16	Withholding of Scientific Research Report	68
17	Reluctance to Release Data on Tobacco Use	68
18	Concern with Reduction or Elimination	
19	of Funding at U.C. San Diego	68
20	Threats of Funding Cuts to Organizations that	
21	Oppose Prop. 99 Funding Transfers	69
22	Request to Defer Confirmation until Problems	
23	Are Remedied	69
24	Questions by CHAIRMAN ROBERTI re:	
25	System for Equitable Distribution of Dollars	
26	to Community Organizations for Health Care	70
27	Cooperative Agreements between Feds	
28	and States	70
	Consensus Agreement Among Primary Care	
	Clinics	70
	Publish Established Funding Criteria	71
	Maintain Continuing Dialogue in Allotment of	
	Contracts and Services	71



1		
2	Plans to Expand Health Care Access with	
3	Shortening Budgets	72
4	Restructuring System	73
5	Questions by SENATOR MELLO re:	
6	Extent of Consultation with Governor over	
7	Prop. 99 Funding Shifts	75
8	Statement by CHAIRMAN ROBERTI re:	
9	Public's Vote for Tobacco Education	
10	Programs in Passage of Prop. 99	75
11	One Major Purpose of Initiative to Pay	
12	for Health Care for Medically Indigent	77
13	Services Targeted	78
14	Major Parts of Program Still Intacct	78
15	Personal Responsibility for Cutting Media	
16	Campaign	78
17	Augmentation of Contract for Media Outreach	
18	with American Lung Association	79
19	Response by SENATOR PETRIS	80
20	Questions by SENATOR PETRIS re:	
21	Suppression of Research Reports	81
22	Legislative Offices Told not to Answer	
23	Questions on Prop. 99	81
24	Questions by SENATOR MELLO re:	
25	Responsibility to Transfer Funds from	
26	Prop. 99	84
27	Unusual to Start New Programs in Year	
28	of Budget Crises	85
	Managed Competition in Health Care	86
	Governor's Voluntary Health Plan	86



Questions by SENATOR PETRIS re:

Universal Health Care Bill Redirects Monies	89
Commitment to Actively Seek Solution to Universal Health Care Access	90
Reports on Canadian System	90
Possibility of Merging San Francisco's California Children's Services Office with Sacramento's Office	91
Status of HESIS, funded by Cal-OSHA, Established by SB 495 of 1985	93
Personnel Actions	94
Cancellation of Public Discussion in San Francisco over Prop. 99 Fund Redirection	96
First Priorities on Use of Additional Money	98
Impressed with Director's Credentials	99

Statement by CHAIRMAN ROBERTI re:

Forty-Three Letters in Support	100
--------------------------------	-----

Statements by SENATOR MELLO re:

Hold up Confirmation until Adjudicatory Hearing Documents Can Be Analyzed	101
---	-----

Discussion	101
------------	-----

Motion to Put Over Confirmation	103
---------------------------------	-----

Committee Action	103
------------------	-----

RICHARD ANDREWS, Ph.D., Director Office of Emergency Services	103
--	-----

Background and Experience	103
---------------------------	-----

Questions by CHAIRMAN ROBERTI re:

Preparedness in Event of Big Earthquake Catastrophe	105
---	-----





1		
2	Motion to Confirm	106
3	Questions by SENATOR PETRIS re:	
4	View on Petris Legislation	108
5	Proposed Changes to Fire Service	108
6	Incident Command System	109
7	Mutual Aid and OES Staffing Hours	110
8	FIREScope Program	111
9	Committee Action	112
10	CLARENCE AVERY, M.D., Member	
	Medical Board of California	
11	Division of Medical Quality	113
12	Motion to Confirm	113
13	Committee Action	114
14	Termination of Proceedings	114
15	Certificate of Reporter	115
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Next are Governor's appointees, and we will be taking off with Donald J. Valpredo, Member of the California Horse Racing Board.

Mr. Valpredo.

MR. VALPREDO: Thank you, Senator. Good afternoon.

CHAIRMAN ROBERTI: We will ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MR. VALPREDO: Thank you.

I've been a thoroughbred breeder and owner of race horses in the State of California since 1966. My family has been breeding racing horses since 1944, so I bring to the Horse Racing Board a large background of expertise in the daily operations of thoroughbred breeding and racing.

CHAIRMAN ROBERTI: Thank you.

Is there any discussion or debate? Is there any opposition in the audience?

Let me ask you a couple questions. There's been some progress toward the inclusion of persons of ethnic backgrounds for participation in the -- inclusion of positions on the Horse Racing Board.

Is that the case? Do you have a policy to work on that?

MR. VALPREDO: Well, I believe that I'm an inclusion. I'm a 100 percent Italian boy.



1 CHAIRMAN ROBERTI: Well, that's nice.

2 [Laughter.]

3 CHAIRMAN ROBERTI: I mean specifically probably like  
4 Hispanics and Blacks.

5 MR. VALPREDO: Senator, if you're regarding [sic] to  
6 the appointment to the Horse Racing Board, or are you directing  
7 that question to the staffing of the Horse Racing Board?

8 CHAIRMAN ROBERTI: Staffing, stewards.

9 MR. VALPREDO: Stewards in particular?

10 CHAIRMAN ROBERTI: Yes.

11 MR. VALPREDO: One of the first assignments I had was  
12 on the Stewards Committee that I was appointed to. I was a  
13 member of that committee. I am now the Chairman of that  
14 committee, of the Stewards Committee.

15 We worked very hard, and the past Chairman, in  
16 designating the stewards for 1992. We tried to keep in balance  
17 seniority, knowledge of the industry, and we now have a new  
18 position of associate stewards, where we're bring up into the  
19 ranks people of Hispanic or Black backgrounds.

20 CHAIRMAN ROBERTI: So you do have an active policy in  
21 that regard?

22 MR. VALPREDO: Yes, Senator, we do.

23 CHAIRMAN ROBERTI: One other issue I have been asked  
24 to asked you a question on is a recurring one with the Horse  
25 Racing Board, and that's regarding union organization at the  
26 satellite wagering facilities.

27 We received a letter on April 20th from the Service  
28





1 Employees International Union asserting that the statute, which  
2 is Section 19608.4 of the B&P Code, requires that the Board  
3 close all satellite wagering facilities if there is not a new  
4 contract signed with the race track contractors for parimutual  
5 clerk services.

6 Is that the Board's understanding, or what is the  
7 Board's policy in the case there is no contract signed?

8 MR. VALPREDO: I -- I'm not able to answer that  
9 question on the Board's policy.

10 The -- I believe that those kind of affairs should be  
11 left between the labor and management to a certain level, and  
12 hoping that they can resolve any difference that they have. I  
13 think the Horse Racing Board should not interfere and show any  
14 favor to either management or labor.

15 I -- that is certainly not my area of expertise.  
16 That's why there's some staff from the Attorney General's Office  
17 on -- on our Board. And perhaps that's why they keep her right  
18 on my left.

19 CHAIRMAN ROBERTI: I think SEIU wants to come up and  
20 speak to this point, so why don't you come on up. Identify  
21 yourself.

22 MS. KEALEY: Thank you very much.

23 Maura Kealey, Service Employees International Union.

24 Very briefly, just to draw the Committee's attention  
25 and the appointee's, that California state law requires that  
26 there be an agreement between the union and the operator of the  
27 satellite facility. So, it's within the jurisdiction of the  
28



1 Horse Racing Board to enforce the law.

2 The question really doesn't go to interfering in  
3 relationships between union and labor, but simply enforcing the  
4 law as it is in effect in California today.

5 CHAIRMAN ROBERTI: Very good.

6 Senator Petris.

7 SENATOR PETRIS: Did we finish that subject?

8 CHAIRMAN ROBERTI: Do you want to continue on the  
9 subject?

10 SENATOR PETRIS: No, I had another.

11 CHAIRMAN ROBERTI: Is anybody else here on that  
12 subject of satellite wagering? On the previous issue? Then  
13 please come forward, and then Senator Petris.

14 MR. AROS: Mr. President, Members, my name is Rudolfo  
15 Aros. I'm an attorney here in Sacramento, and for the past few  
16 years, I've been actively involved in issues relative to  
17 affirmative action on behalf of various organizations,  
18 particularly state employees, and the issue with respect to the  
19 actions of the California Horse Racing Board has been brought to  
20 my attention, and I'm glad that you raised that issue here.

21 I just wanted -- I don't have any particular  
22 objection to this candidate or the other candidate for  
23 appointment to the Board, but I do think that it's very  
24 important for this body to bring to their attention the fact  
25 that there are no minority stewards appointed by the CHRB, and  
26 there's only been one since 1988, and he no longer is working  
27 for them. And he wasn't a live steward; he was a satellite  
28



1 steward.

2 And there have obviously been a number of candidates  
3 who have applied who are qualified for those position and never  
4 been given consideration. And I think the record speaks for  
5 itself, the fact that they've apparently hired 23 this year, not  
6 one minority, not one. And given the fact that this Legislature  
7 just a year ago passed legislation requiring the Board to take  
8 into consideration the fact that ex-jockeys should be given some  
9 sort of consideration for those appointments, you know that  
10 there's a lot of -- a lot of Hispanic ex-jockeys out there who  
11 are trying to get these positions, and they're not being given  
12 consideration.

13 I really appreciate the President Pro Tem's reference  
14 to this issue, and I really think that the members of the Board  
15 ought to be challenged to comply with their stated own -- their  
16 own stated policy with respect to affirmative action in  
17 contracting, and these are contract employees.

18 I appreciate your time.

19 CHAIRMAN ROBERTI: Thank you.

20 Any questions?

21 Senator Petris.

22 SENATOR PETRIS: Well, I've been interested in labor  
23 issues, too. I have been for a long time.

24 One of the problems is, they don't -- you don't have  
25 a grievance procedure there. If a parimutual clerk has a  
26 problem, he's supposed to go to his shop steward, but there's no  
27 formal mechanism by the Board itself to provide an avenue for  
28





1 filing the grievances, as I understand it. They never have had.

2 I'm wondering if the Board is even thinking about or  
3 discussing improving the accessibility of employees for  
4 expressing their problems? Is there anything on the horizon?  
5

6 MR. VALPREDO: Senator, I don't know of anything  
7 agendaed. I've only been on the Board seven or eight months,  
8 and none of that has come before us on our agendas.

9 There's the normal procedure for that to go through,  
10 and to my -- I have not been a part of any of that Board that  
11 has not seen any of that come before us or would stop any of  
12 that to come before us.

13 SENATOR PETRIS: Do you know what the procedure is?  
14 If I were a parimutual clerk and I had a complaint against some  
15 conduct of management, where do I go? What do I do?

16 MR. VALPREDO: You'd probably go to the stewards of  
17 the race track first, and the stewards would bring it to the  
18 Board. Or, you could contact the California Horse Racing Board  
19 office here in Sacramento and give it notice, and it would be  
20 agendaed.

21 SENATOR PETRIS: Suppose I'm at a track in Southern  
22 California. I contact them by mail, I guess; send in a  
23 complaint?

24 MR. VALPREDO: I guess so, sir.

25 SENATOR PETRIS: I was very active in the insistence  
26 when the satellite program was established that this particular  
27 provision in the code that was referred to be established. And  
28 we had a very clear understanding, at least in the Senate, that



1 this would be strictly observed and enforced. And now we're  
2 getting complaints that it isn't.

3 It seems to me, everytime we have, you know, a new  
4 member confirmed, I ask them about that, and they say, "Yeah,  
5 we're going to comply with the law, and follow the letter and  
6 the spirit," and then we still get complaints.

7 Senator Roberti has asked you about it. No point in  
8 my going over the same thing, but I would urge you to take a  
9 good look at that provision, and bear it in mind when these  
10 things come up. If it's not clear enough, we'll have to, you  
11 know, put in another amendment, I guess, and clarify the law.  
12 But the intention is certainly clear.

13 We could have stopped the extension to a satellite  
14 system. That was the issue. Do you want the extension, do you  
15 want the satellite system, you put this in. Otherwise, there's  
16 no satellite system.

17 Now we have a satellite system, and the same old  
18 complaints are still there, and that makes me personally kind of  
19 disappointed and unhappy, because that was the agreement  
20 originally.

21 Now, you're not a party to it. You don't know the  
22 history of it. So, I'm not criticizing you, but I'm criticizing  
23 the Board as a whole. They should be complying with that  
24 agreement and with the statute.

25 Now, I know they have an Attorney General's opinion  
26 that they're not obligated to do this or that, which I haven't  
27 read; I've just heard about it today, and I'd like to examine  
28



1 that, too.

2 In the meantime, I would urge you to check the  
3 history, and be very sensitive to the commitments that were made  
4 at the time.

5 MR. VALPREDO: Thank you, Senator. I definitely  
6 will.

7 SENATOR PETRIS: Thank you.

8 SENATOR MELLO: Mr. Chairman.

9 CHAIRMAN ROBERTI: Senator Mello.

10 SENATOR MELLO: I just would like to comment on, I  
11 think last year the Rules Committee, we set a goal, and I think  
12 we sent the Governor a communication listing that we thought  
13 appointments should be made on the basis of gender equity, women  
14 and men, and also ethnic groups.

15 It just happens that his appointments continue to be  
16 male. There's six males, one female, out of seven appointees;  
17 one Hispanic out of seven appointees, the rest all being  
18 Caucasian.

19 I think that truly does not reflect the ethnic and  
20 gender make-up of the State of California.

21 And like Senator Petris pointed out and others, where  
22 do ethnic groups turn to if the make-up of the Board as  
23 appointed by the Governor is such that they're just left out of  
24 the system? Right now, the facts are that Blacks are under-  
25 employed, Hispanics are under-employed, women are underpaid as  
26 far as the amount of pay they're getting for the same work that  
27 men perform. And somewhere, somebody has to stand up and be  
28





1 accountable for all this; otherwise, we keep the status quo  
2 going on for years, and years, and years. And this is what's  
3 going to destroy our diversity and our form of government  
4 eventually.

5 That's just my comment, and I feel very strongly  
6 about it.

7 MR. VALPREDO: Thank you, Senator.

8 CHAIRMAN ROBERTI: Any other questions? Is there any  
9 support in the audience?

10 Do I hear a motion?

11 SENATOR CRAVEN: So move.

12 CHAIRMAN ROBERTI: Senator Craven moves confirmation  
13 be recommended to the Floor.

14 Secretary will call the roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye.

18 Senator Mello.

19 SENATOR MELLO: No.

20 SECRETARY WEBB: Mello No.

21 Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye.

24 Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Craven Aye.

27 Senator Roberti.  
28



1 CHAIRMAN ROBERTI: Aye.

2 SECRETARY WEBB: Roberti Aye.

3 CHAIRMAN ROBERTI: The vote is four to one;  
4 confirmation is recommended to the Floor.

5 Congratulations.

6 MR. VALPREDO: Thank you, Senators.

7 CHAIRMAN ROBERTI: The next is the appointment of  
8 Dr. Molly Coye, Director of Health Services.

9 I believe, Dr. Coye, we have had you -- and Senator  
10 Bergeson is here to introduce her. Senators Morgan and Bergeson  
11 are here, but I guess Senator Bergeson was here first, and they  
12 will introduce Dr. Coye, and then Dr. Coye, you will make your  
13 opening statement as to your qualifications for serving in this  
14 position.

15 Senator Bergeson.

16 SENATOR BERGESON: Thank you, Mr. President and  
17 Members of the Committee.

18 I would like very much to give my strongest support  
19 to Dr. Molly Coye for confirmation of the Department -- or,  
20 Director of the Department of Health Services.

21 I've had the opportunity of getting to know Dr. Coye  
22 both through the legislative process as well on a personal  
23 level, and I can commend her in the highest possible way from a  
24 position of integrity and background that she brings to this  
25 office is impeccable, her experiences in family practice as well  
26 as in many public health services.

27 One area that I'm particularly impressed with is her  
28



1 attention given to preventative health care. And certainly, as  
2 we look at the issues dealing with women and children, I think  
3 that she carries great leadership and potential for addressing  
4 those problems in a most conscientious and capable way.

5 As current Chair of the Women's Legislative Caucus, I  
6 circulated a letter which I believe you have had submitted to  
7 you, of which are 15 women. And if you scrutinize those  
8 signatures, it's a bipartisan group of women giving total and  
9 complete support to her confirmation.

10 I think that this offers a unique opportunity for a  
11 woman of such talent to be a very active player in the issues of  
12 health care, and as we look at the budget and the issues that  
13 are dealing with the all-important issue of health care reform,  
14 I think that her talents are needed and can be greatly  
15 appreciated.

16 So, I want to give my support to her, and I hope that  
17 the Committee will see fit to see her confirmed.

18 Thank you very much.

19 CHAIRMAN ROBERTI: Thank you, Senator.

20 Senator Morgan.

21 SENATOR MORGAN: Thank you very much, Senator Roberti  
22 and Members.

23 I just, as a signator on the letter that, I think,  
24 speaks for my support for Dr. Coye, who I think brings expertise  
25 to this job that has not been exceeded, at least in my eight  
26 years here in Sacramento.

27 I think as you have read her resume and hear her  
28





1 speak, you hopefully will understand the fine qualities and the  
2 dedication that she brings to this job.

3 I have not always agreed with the Director of my own  
4 Valley Medical Center County Hospital, but on this issue, we are  
5 in full agreement. And he has a letter that he sent to Senators  
6 Alquist, McCorquodale and myself in strong support of Dr. Coye,  
7 and that the result of working with her over the past year, and  
8 knowing of the fine leadership she's provided since she has been  
9 appointed to this position.

10 And I do hope that the Rules Committee here today  
11 will not hold Dr. Coye responsible for budget decisions that  
12 have not yet been made. That rather, you will look at her  
13 qualifications and know that she will be there to implement the  
14 will of the Legislature. And that it is her qualifications on  
15 which she should be judged.

16 Thank you.

17 CHAIRMAN ROBERTI: Thank you, Senator.

18 Dr. Coye.

19 DR. COYE: Thank you very much.

20 Since the last time that I appeared before you was  
21 rather late in the day, after a very exhausting afternoon, I'd  
22 like to take the opportunity to make few opening remarks, if I  
23 could.

24 CHAIRMAN ROBERTI: Yes.

25 DR. COYE: First of all, I'd like to address my  
26 qualifications for the job in the most traditional and  
27 straightforward way, beginning with graduation. I got my B.A.  
28



1 in Political Science from the University of California in  
2 Berkeley in 1968. I then spent three years in Asia, studying  
3 Chinese History and Literature and Language; came back and did a  
4 Master's at Stanford in Chinese History.

5 At that point, showing a remarkable lack of constancy  
6 in my career decisions, I decided to go to medical school, and  
7 did both my M.D. and my Master's in Public Health at Johns  
8 Hopkins School of Medicine in Public Health.

9 During that time, I also began my work in  
10 preventative medicine and in public health, and worked with the  
11 Oil Chemical Atomic Workers Union as an intern for -- during  
12 most of that time. I did my internship in family practice at  
13 San Francisco General Hospital, and my residency at U.C.S.F.  
14 During that time, I worked with the Oil Chemical Atomic Workers,  
15 Local I-5, in Martinez as my continued experience in  
16 occupational health.

17 I then founded a clinic at San Francisco General  
18 Hospital for occupational health, which was the second clinic in  
19 the country established to assist workers with occupational  
20 health problems, and also was a clinical professor at U.C. From  
21 '80 to '85, I was a Medical Officer for the National Institute  
22 of Occupational Safety and Health based in San Francisco and  
23 worked primarily on migrant health problems among farmworkers --  
24 migrant health and pesticide problems in farmworker communities  
25 up and down the Central Valley and along the coast.

26 In '85, I was invited to go to New Jersey and serve  
27 as an advisor to Governor Thomas Kane for Health and the  
28



1 Environment. I did that for one year, and then was Commissioner  
2 of Health four years in New Jersey.

3  
4 At the end of that time, I went to Johns Hopkins  
5 again on the faculty in the School of Public Health, concluded  
6 after a year and a half on the faculty of an academic  
7 institution that I preferred government service, and was invited  
8 to come here and join Governor Wilson's Administration.

9 That gives you a brief summary of my background. I'd  
10 like to turn a little bit then to the kinds of activities I've  
11 been involved in professionally.

12 I'm a Fellow of the American College of Physicians  
13 and American College of Preventative Medicine, which are my  
14 primary professional associations, in addition to the American  
15 Public Health Association, for which I was Chair of the  
16 Executive Board and Chair of the Occupational Health and Safety  
17 Section. I'm also on the Executive Board of ASDO, which is the  
18 national organization of state health directors, and a Fellow of  
19 the National Academy of Public Administration, which is an  
20 equivalent of the Institute of Medicine for government  
21 administrators, congressionally established. And I offer that  
22 to you as an indication of my interest in government issues and  
23 the general issues of governance.

24 In addition to that, there are a couple of other  
25 professional activities I've been involved in that might be of  
26 particular interest, given the time that you've devoted to your  
27 concerns about environmental health. I have been not only a  
28 member of the Advisory Council for the National Institute for





1 Environmental Health Sciences, which is the federal NIH  
2 institute, but oversees all federal research on environmental  
3 health issues for three years, but also a part of the  
4 Environmental Epidemiology Committee of the National Academy of  
5 Sciences. This is a special expert committee appointed three  
6 years ago. We concluded a two-year study of patterns of ill  
7 health, disability and disease, caused by environmental  
8 exposures. So, we spent a great deal of time pouring over all  
9 of the information in that area.

10 I also, and perhaps most germanely, was a member of  
11 the Secretary's Panel for the Evaluation of Epidemiological  
12 Research Activities for the Department of Energy. This is about  
13 two years ago. It was convened to look at the capacity of the  
14 Department of Energy to track the health patterns of its own  
15 workers and contract workers exposed to radiation on the job.  
16 And in that capacity, I recommended, and we did succeed in  
17 reporting out, a recommendation which was enacted to remove many  
18 of those activities from the Department of Energy and transfer  
19 them to the Department of Health and Human Services,  
20 specifically to CDC and NIOSH.

21 So, I've spent a fair amount of professional time  
22 looking at those issues.

23 What I would like to do in conclusion is talk a  
24 little bit about what I hope to achieve during the time that I  
25 would be in office if confirmed.

26 I believe that this background prepares me not just  
27 to manage complexity, and the Department of Health Services is  
28



1 very complex, very large, certainly the largest in the country,  
2 but also that it prepares me for leadership and for managing  
3 change. And I believe that we are in the middle of and will  
4 continue to face profound change.

5 I came here to be a leader and to apply those skills  
6 and that background. I arrived to confront a budget situation  
7 that is challenging me and will challenge all of us far beyond  
8 anything that we were prepared for in our previous work.

9 Managing change and leadership in this environment  
10 means balancing increasing demands against grossly fewer public  
11 resources. It means maximizing those resources through  
12 innovation and building public-private partnerships,  
13 responsiveness to our growing ethnic and economic diversity  
14 within the state, and above all, prevention, and integrating  
15 prevention into every part of the work that our Department does.

16 I came with the intention of integrating the side of  
17 the Department which is Medi-Cal with the side that  
18 traditionally has been called Public Health, to try to make sure  
19 that prevention is a key building block within all of our  
20 programs, and that solving the problem of access, which is  
21 something that I hope during my tenure we would take major  
22 strides towards, would involve making sure that prevention is  
23 the first building block of access, and that access is not just  
24 to fixing people up after they have become sick, but to actually  
25 preventing them from becoming sick and access to all of those  
26 prevention services.

27 The strategies for doing this, then, include both  
28





1 expanding access, and within that, not just increasing financing  
2 for care, but restructuring care in a very profound way, but  
3 also community outreach, and maintaining the core services of  
4 public health, even during the most difficult times  
5 economically. Within the Department, that means a high degree  
6 of accountability; opening up a Department that some people feel  
7 has not been able to communicate everything that is going on  
8 within it, all of what it hopes to accomplish, and what it has  
9 accomplished, and holding ourselves accountable. To that end,  
10 developing data systems that allow you, the Legislature and the  
11 public, to actually examine what we are doing for the health of  
12 the public.

13 We also will be working to streamline and consolidate  
14 many of our programs and our services. With the Governor's  
15 strong support and leadership, we're working on school-linked  
16 services, on the promotion of primary care, and on, through your  
17 support with AB 99, the consolidation of our Maternal and Child  
18 Health Programs.

19 I believe even in a time of tremendous crisis and  
20 tremendous challenge, that we can exert real leadership, that we  
21 can achieve real change.

22 Thank you very much.

23 CHAIRMAN ROBERTI: Thank you, Doctor.

24 Are there any questions? Senator Mello.

25 SENATOR MELLO: Mr. Chairman, perhaps one more of  
26 procedure.

27 I know Ms. Coye was part of the testimony on  
28





1 Mr. Gould when we heard his confirmation also, and I'm referring  
2 to the Ward Valley adjudicatory hearing process, which she will  
3 be the decision maker on that decision.

4 We've gotten a letter from one group. They claim  
5 that this agreement, it's supposed to be printed in the record,  
6 the Journal, was only made available yesterday, so they'd like  
7 more time to evaluate it because they feel that part of it is  
8 not consistent with what was discussed here at the hearings.

9 Secondly, I understand from Ms. Michel that the  
10 Legislative Counsel would like to have some more time as well in  
11 order to review the agreement.

12 From my standpoint, I would like to make sure that  
13 those agreements are put forth and filed in the Journal. The  
14 persons from the opposition to Ward Valley are also supposed to  
15 set forth their understanding of the agreements, but they want  
16 copies of the transcripts, which are being made available.

17 So, I'm asking, Mr. Chairman, is your plan to put her  
18 over for that information, or are we going to take testimony  
19 today and make a decision, because I have some other questions  
20 I'd like to her about.

21 CHAIRMAN ROBERTI: Well, we have a number of people  
22 here to testify. I don't think it would be fair to them not to  
23 have them heard.

24 However, if a Member of the Committee chooses to  
25 request that a confirmation be put over, as long as it doesn't  
26 jeopardize the confirmation, that's what we normally do one time  
27 after the initial testimony.  
28



1           SENATOR MELLO: I don't want to inconvenience the  
2 people that are here.

3           I would support hearing testimony, then I'll reserve  
4 the right to ask that it be put over.

5           CHAIRMAN ROBERTI: All right. It's my understanding  
6 that the Ward Valley agreement, although it did reach us only  
7 yesterday, I don't think there are major disagreements over it;  
8 although it's obviously something everybody wants to see. But  
9 there may be interpretation questions, but it's my understanding  
10 there is not a major befuddlement that both -- that there's an  
11 impasse between the various people who were discussing this.

12           SENATOR MELLO: I understand the Leg. Counsel has --  
13 if I may ask Nancy, was there a communication from Leg. Counsel  
14 asking for some time to interpret?

15           MS. MICHEL: Yes, until we get input from the other  
16 side, they need some additional time. Jimmy thinks there may be  
17 additional minor things --

18           CHAIRMAN ROBERTI: Our Leg. Counsel, yes.

19           MS. MICHEL: Our Leg. Counsel.

20           CHAIRMAN ROBERTI: Okay, fine.

21           Senator Petris.

22           SENATOR PETRIS: Well, I would join in the Senator's  
23 request, but I think we can save time by going into other  
24 issues. I had told Dr. Coye last time that I had a couple of  
25 subjects I wanted to go into that aren't related to this.

26           I think we ought to hear the testimony of people who  
27 have come from a distance, and I'd like to go into these other  
28



1 issues, and then I would join Senator Mello in putting over the  
2 hearing for the other two matters.

3 CHAIRMAN ROBERTI: Very fine.

4 Why don't we call on the witnesses. We'll start with  
5 witnesses in support. I have two witnesses here who I  
6 understand have to catch planes, so I'll call on them.

7 I'll call on the following people that I have here  
8 that are to testify in support of Dr. Coye: Mark Diaz, Latino  
9 Health Policy Council.

10 Why doesn't Mr. Diaz come up first, because I  
11 understand he has to catch a plane.

12 After that, Dr. Birt Harvey, Academy of Pediatrics;  
13 Dr. Carl Smith, California Conference of Local Health Officers;  
14 Ophelia Long, Executive Director of the Highlands Hospital;  
15 Sister Elizabeth Joseph Keaveney of Lynwood Hospital; Dr. Pat  
16 Salber of the Emergency Room Physicians; and Hoda Anton-Culver,  
17 U.C.L.A. In addition, John Dunn-Mortimer, AIDS Project L.A.;  
18 Helyne Meshar, AIDS Project, Hollywood; and Laurie McBride, LIFE  
19 AIDS Lobby.

20 Is there anybody here to testify in support that I  
21 don't have on the list? Three people.

22 Yes, and you are?

23 DR. LASHOF: Joyce Lashof, L-a-s-h-o-f.

24 CHAIRMAN ROBERTI: Dr. Joyce Lashof, thank you.

25 MR. HITCHCOCK: Doug Hitchcock, California  
26 Association of Hospitals and Health Systems.

27 To save time, Senator, we're here to reiterate our  
28





1 support. We previously testified.

2 CHAIRMAN ROBERTI: Duly noted and thank you very  
3 much.

4 [Laughter.]

5 CHAIRMAN ROBERTI: Any more like that?

6 [Laughter.]

7 CHAIRMAN ROBERTI: And Mr. Barnhart.

8 One other I missed.

9 MS. CAPELL: Beth Capell, California Nurses  
10 Association.

11 CHAIRMAN ROBERTI: California Nurses Association.

12 That's going to be the list of witnesses in support.  
13 I'm going to close it because we have --

14 MR. FLATT: Senator, Dennis Flatt, Kaiser Permanente,  
15 in support.

16 CHAIRMAN ROBERTI: And that's your testimony, okay,  
17 good.

18 [Laughter.]

19 CHAIRMAN ROBERTI: Dennis Flatt, Kaiser Permanente,  
20 support.

21 Dr. Diaz.

22 DR. DIAZ: Mr. Chairperson and Members, good  
23 afternoon. My name is Dr. Mark Diaz, and I'm here representing  
24 the Chicano Latino Medical Association of California. We're a  
25 statewide organization comprised of approximately 500 members in  
26 all fields of health, medical practice, and all types of  
27 practice settings from single practitioners to those who are  
28



1 also members of large HMOs. CMAC is a professional organization  
2 dedicated to improving the health status of Latinos.

3 I personally am a family practitioner, family  
4 practice physician here in Sacramento. I graduated from the  
5 University of California at San Francisco School of Medicine and  
6 completed my residency, internship and Song-Brown Fellowship at  
7 the U.C. Davis Medical Center, where I now teach part-time. I  
8 also have my own private practice.

9 I'm here today to urge your confirmation of Dr. Molly  
10 Coye as Director of the State Department of Health Services.

11 CMAC views Dr. Coye as a breath of fresh air, in that  
12 she considers California's diverse populations as a wealth and a  
13 benefit, rather than a social problem. She has met with various  
14 coalitions representing under-served populations to begin  
15 addressing unmet health needs of those populations. As an  
16 example, Dr. Coye has supported ongoing dialogue with the  
17 Coalition of Latino Health Organizations to begin addressing  
18 issues such as increased access to prenatal care. Additionally,  
19 the members of CMAC are enthusiastic in their support of the  
20 preventative medicine initiatives under way within the  
21 Department, such as Check-Up and Healthy Start.

22 CMAC welcomes the change in the Administration's  
23 focus from Band-Aid care to preventative medicine. We see such  
24 a change as an important step in solving the numerous and  
25 complex health problems facing Hispanics and the state in  
26 general.

27 Once again, I urge your confirmation of Dr. Molly  
28



1 Coye. Based on her training and work experience, Dr. Coye  
2 brings a tremendous amount of knowledge and understanding of  
3 sound, basic public health principles, and an in-depth  
4 understanding of the workings of an effective health care  
5 system.

6 CMAC looks forward to an ongoing mutually beneficial  
7 working relationship with Dr. Coye and the Department of Health.

8 Thank you.

9 CHAIRMAN ROBERTI: Thank you very much.

10 Next is Dr. Birt Harvey, Academy of Pediatrics.

11 DR. HARVEY: Thank you, Senator Roberti and Members  
12 of the Senate Rules Committee. I appreciate the opportunity to  
13 testify in behalf of Dr. Coye for confirmation for head of the  
14 State Health Department.

15 I am a professor of Pediatrics at Stanford  
16 University. I served as the District Chairman for California  
17 for the American Academy of Pediatrics, and subsequent to that,  
18 as President of the organization nationally.

19 The Academy is about 43,000 members nationally, and  
20 about 4,000 in the state. And our primary purpose is to improve  
21 the health and welfare of children.

22 In my role as President, became well aware of what  
23 Dr. Coye had done in New Jersey. And I wish to address that to  
24 you today, because that is something which should be relevant to  
25 your consideration of her confirmation in the present role.

26 She -- when she served as Health Commissioner in the  
27 State of New Jersey, she developed two innovative programs that  
28





1 I would like to mention to you that concerned pregnant women and  
2 children.

3         The first was called Health Start. It was a program  
4 designed to improve the accessibility and the scope of services  
5 available to all Medicaid-eligible pregnant women and young  
6 children. In designing this program, she worked with the  
7 Children's Defense Fund, with the pediatricians in the State of  
8 New Jersey, and obstetricians in the state.

9         What she tried to do was several things with this.  
10 To make services more available to Medicaid recipients, she  
11 improved provider reimbursement, which increased pediatrician  
12 and obstetrician participation in a variety of different care  
13 delivery arrangements. She arranged courses for the providers  
14 and their staffs to increase their cultural awareness and  
15 sensitivity to patients' needs.

16         To increase utilization of prenatal care and  
17 preventive care for children, she used a large number of means.  
18 She sent notices out with the Welfare checks of the availability  
19 of care. She had radio and t.v. public service announcements,  
20 posters. There was an 800 number, so that families on Medicaid  
21 could call in and be referred to a nearby provider to deliver  
22 service for the pregnant or that infant. She hired through a  
23 grant from the Ford Foundation a number of local women from the  
24 areas to go out and canvass and speak to pregnant women, and see  
25 that they got into medical care early on, and they arranged to  
26 speak to neighborhood groups about the value of early prenatal  
27 care and infant and child care.  
28



1           She modeled the services after the program that you  
2 were wise enough to institute here, the OB Access Program. The  
3 services, therefore, did include: health support services for  
4 pregnant women on Medicaid; counseling; nutrition advice; home  
5 visits; health education; coordination of care. And she had  
6 within this program, too, quality assurance.

7           The other program that I would -- it was very highly  
8 successful, I would mention, too. It was recognized as a  
9 national model by the National Governors' Association and the  
10 National Conference of State Legislators.

11           She had a second innovative program called New Jersey  
12 Moms that was designated to provide quality care for the  
13 medically indigent in the state, too, and their offspring. It  
14 took money from the New Jersey All Payer Fund and paid global  
15 fees to obstetricians and pediatricians. It was approved by all  
16 the necessary boards and commission, and was anxiously awaited  
17 by national public health policy leaders to see its -- how  
18 effective it would be and if it would work well. Unfortunately,  
19 it did emphasize preventive care in obstetrics by prenatal care,  
20 and for infants, and it was -- would serve low-birth -- save  
21 low-birth weighted infants, and save much money this way, as  
22 well as being a very humane program.

23           Unfortunately, because of a change in administration  
24 and Dr. Coye leaving at that point, the program was not able to  
25 be implemented.

26           I mention all these points just to illustrate several  
27 pertinent things you should consider about Dr. Coye. She's  
28





1 innovative, but practical with her innovation. It's practical;  
2 it works. She reaches out to work with all groups, private and  
3 public. She's inclusive, not exclusive. She emphasizes  
4 prevention, and she cares about those who are less well off than  
5 we are, and less politically potent: poor mothers and children,  
6 their children.

7           And for all these things we applaud her. We think  
8 highly of her.

9           Now, these characteristics are true not just in New  
10 Jersey, but they're true here equally well in California. She's  
11 worked closely with the Academy of Pediatrics to develop  
12 programs of high quality that will increase access to care for  
13 pregnant women and for their children, and for all of  
14 California's children. And we applaud her efforts, her  
15 initiatives, her enthusiasm, and her dedication.

16           We strongly support her nomination as Director of the  
17 State Department of Health Services.

18           Thank you very much.

19           SENATOR PETRIS: Mr. Chairman.

20           CHAIRMAN ROBERTI: Senator Petris.

21           SENATOR PETRIS: I'd like to ask the doctor some  
22 questions.

23           This is difficult, but I greeted Dr. Coye when she  
24 first landed in California, in the first few days, and I have a  
25 tremendous admiration for her, and her credentials are awesome.

26           She has emphasized prevention in a lot of her  
27 programs and in her statement just now, and you just emphasized  
28





1 prevention.

2 In light of that, I'm puzzled by some of the actions  
3 taken. Some of them, admittedly, come from the Governor, and  
4 she's appointed by the Governor. There's a problem in OSHA, a  
5 reduction in some of the important activities going on there.  
6 The Cancer Registry has gone through a reduction.

7 I realize these are probably budget considerations.  
8 They may not be within her control.

9 Big cuts in the Tobacco Proposition 99 expenditure of  
10 money.

11 Now you, as a pediatrician, I think, are more keenly  
12 aware of the impact of smoking on children. The budget has a  
13 \$60 million transfer out of Prop. 99. The education part of it  
14 is reduced. The advertising, the media, is reduced. Contracts  
15 with nonprofit outfits have been canceled. Every one of these  
16 steps is a reduction of activity of prevention.

17 Now, how do you square your testimony with this  
18 conduct, with this policy?

19 DR. HARVEY: Senator, I think if Dr. Coye had her  
20 druthers, and there was money available, she would support every  
21 one of those programs fully.

22 The problem, as you and I well know, is the available  
23 dollars. And it's -- the Administration has to decide within  
24 its wisdom how it's going to allocate those resources, and  
25 Dr. Coye has to do the best she can with -- in the confines of  
26 the amount of dollars allotted.

27 I would be sure that she would speak strongly for all  
28



1 those programs.

2 SENATOR PETRIS: Are you telling me as a pediatrician  
3 it's okay to move \$60 million out of the Prop. 99 education and  
4 other --

5 DR. HARVEY: I don't like it at all, Senator. I'd  
6 love to see it stay there. I think it's very important. And  
7 preventing children from starting smoking is far better than  
8 trying to get people to stop once they are hooked on nicotine.

9 I agree with you fully. It displeases me. There are  
10 a lot of things that displease me, and displease the Academy.  
11 But we recognize that there are limitations.

12 All we can do is support for as much as Dr. Coye can  
13 get through.

14 SENATOR PETRIS: Have you expressed that displeasure  
15 to the Governor? You meaning the Academy.

16 DR. HARVEY: Uh, I don't know. At the present time,  
17 I don't hold office within the state Academy of Pediatrics. I  
18 served as Chairman, and then went on to national office.

19 I don't know if they have or not. I know they are  
20 displeased, but I don't know if they have formally expressed  
21 that.

22 SENATOR PETRIS: Expressions to Dr. Coye?

23 DR. HARVEY: Oh, I think she knows very well how we  
24 feel. I don't think there's any question about that.

25 Perhaps when you have the opportunity, you can  
26 question her directly on her feelings about the program.

27 SENATOR PETRIS: Yes, but you're the witness right  
28



1 now --

2 DR. HARVEY: Right.

3 SENATOR PETRIS: -- and I want to take advantage of  
4 the opportunity here.

5 Thank you.

6 DR. HARVEY: Thank you very much, Senator.

7 Thank you, Senator Roberti.

8 CHAIRMAN ROBERTI: Thank you very much.

9 The next witness is Mr. Carl Smith, California  
10 Conference of Local Health Officers.

11 MR. SMITH: Senator Roberti, Committee Members, I am  
12 Carl Smith, the President of the California Conference of Local  
13 Health Officers.

14 I'm here today to urge that your Committee recommend  
15 confirmation of Dr. Coye.

16 The Conference of Local Health Offices has a  
17 statutory requirement to advise the Department of Health  
18 Services and the Legislature regarding public health issues.  
19 Dr. Coye has already demonstrated her willingness and ability to  
20 work very closely with us in fulfilling our responsibility to  
21 participate in public health policy development.

22 As you've already heard, and I don't want to  
23 reiterate it too many more times, but it is important to comment  
24 upon how exceptionally well qualified Dr. Coye is to serve as  
25 Director. She brings to the position a wealth of experience.

26 She's already demonstrated that she is a strong  
27 spokesperson and advocate for public health, and she is now  
28





1 providing the kind of statewide leadership which we in public  
2 health have so badly needed.

3 We look forward to working closely with Dr. Coye as  
4 she continues to give us a kind of leadership in public health  
5 services in California.

6 I would also like to recommend Dr. Coye's  
7 confirmation on behalf of the Alameda County Health Care  
8 Services Agency and its Director, David Keers. Dr. Coye has  
9 been exceptionally helpful to us in Alameda County around a  
10 number of issues, and we have found her readily accessible, very  
11 supportive, and extremely helpful, and we really have enjoyed  
12 working with you very much.

13 Dr. Coye typifies the kinds of committed, hard-  
14 working leaders which we need in state government. And again, I  
15 urge that your Committee confirm her appointment as Director of  
16 the Department of Health Services.

17 CHAIRMAN ROBERTI: Thank you.

18 Senator Petris.

19 SENATOR PETRIS: Do you work with the Lung  
20 Association in Alameda County?

21 MR. SMITH: I'm not with them. I work with them,  
22 yes.

23 SENATOR PETRIS: You're aware of their programs?

24 MR. SMITH: Yes.

25 SENATOR PETRIS: Is that a good outfit?

26 MR. SMITH: Yes.

27 SENATOR PETRIS: Do you know that the Department  
28



1 canceled their contract with the Department for the services  
2 they perform in this overall battle against cancer?

3 MR. SMITH: Which -- I don't know which contract  
4 exactly that is.

5 SENATOR PETRIS: Well, it's a contract developed  
6 under Proposition 99.

7 MR. SMITH: Okay, this was one of their ---

8 SENATOR PETRIS: It's \$1.9 million, relating to their  
9 services to carry out the intent of Prop. 99.

10 MR. SMITH: This was the State Lung Association.

11 SENATOR PETRIS: The State, yes.

12 MR. SMITH: Right. I'm aware of that.

13 SENATOR PETRIS: You're aware of that cancellation?

14 MR. SMITH: Yes.

15 SENATOR PETRIS: That was not a budgetary problem.  
16 It wasn't done for budget reasons. There was a contract let,  
17 and then it was canceled within hours after they filed a lawsuit  
18 challenging the transfer of money out of Prop. 99.

19 Are you aware of that?

20 MR. SMITH: No, I was not.

21 SENATOR PETRIS: Would you approve of that?

22 MR. SMITH: I would not approve the canceling of the  
23 contract as a retribution, as you've suggested.

24 SENATOR PETRIS: Well, I didn't use the word, ,but  
25 you can draw your own conclusions.

26 What about transfer of other monies out of 99  
27 education campaign into other very good other medical services,  
28



1 but not the ones required by Prop. 99?

2 MR. SMITH: Right.

3 SENATOR PETRIS: Do you have any comment on that?

4 MR. SMITH: Yes.

5 There are two major problems, and you're probably  
6 better aware of them than I, but the first is that the funds are  
7 diminished. They are declining from the cigarette tax, one.

8 Two, as you know, we're also increasing -- have  
9 increasing demands for funding for medical care.

10 I think that Dr. Coye and the State Department has  
11 had to walk a very fine line of trying to preserve some sort of  
12 prevention dollars out of this pot of dollars, and at the same  
13 time, try to maintain the health services in Alameda County --  
14 excuse me, in California.

15 I think the Conference of Local Health Officers has  
16 opposed the -- any transfer of dollars out of the education  
17 account, and that's been our position. But I also think that we  
18 recognize that Dr. Coye had to make some very hard decisions  
19 around this allocation of funds.

20 SENATOR PETRIS: Okay, thanks.

21 CHAIRMAN ROBERTI: Thank you.

22 Any other questions?

23 Thank you very much.

24 The next witness is Ophelia Long, Executive of  
25 Highlands Hospital.

26 MS. LONG: Mr. Chairman and other Members, my name is  
27 Ophelia Long. I'm the Hospital Director, Chief Executive  
28





1 Officer, at Highland General Hospital, a member of the Board of  
2 Directors of the California Association of Public Hospitals,  
3 Chairman of the Black Congress on Health Law and Economics, and  
4 past President of the National Black Nurses Association.

5 I'm speaking on behalf of the California Association  
6 of Public Hospitals in support of the confirmation of Dr. Molly  
7 Coye as Director of Health Services.

8 During her tenure, Dr. Coye has provided a positive  
9 leadership and vision which we need so desperately during this  
10 time of change. She is acutely aware of the injustice suffered  
11 by the citizens of Alameda County and Highland Hospital who  
12 cannot advocate for themselves in articulating their health care  
13 needs. She recognizes that in talking about health care, we're  
14 not talking compassion; we're not talking economics; we're not  
15 talking diseases and technology. We're talking justice.

16 Dr. Martin Luther King, 30 years ago, said that  
17 injustice anywhere is a threat to justice everywhere. Today, 30  
18 years later, justice has become a payment for being harmed,  
19 rather than a moral belief that directs life in this country.  
20 As a result, we live not with the lack of justice, but with rank  
21 injustice, and then try to make it up to people by special  
22 benefits and programs.

23 Nowhere is injustice more flagrant than in the  
24 delivery of health care. Dr. Molly Coye has brought with her a  
25 balanced scale of knowledge and understanding of the health care  
26 needs of the citizens of this state, and a commitment to follow  
27 through in bringing this state to a level of wellness that will  
28



1 focus on prevention and the correct solutions for teenage  
2 pregnancy and infant mortality.

3         She's committed to creating, as Dr. Lewis Sullivan,  
4 Secretary of Health and Human Services says, a culture of  
5 character among California citizens, especially our young, that  
6 will instill within them early in life a commitment to avoid  
7 personal habits, i.e., drugs, tobacco, and alcohol, that places  
8 them at risk for many diseases.

9         Dr. Coye has visited the California Association of  
10 Public Hospitals Board meetings to hear our concerns. She has  
11 visited Highland Hospital and has supported: our Healthy Infant  
12 program that increases access of high risk infants born to  
13 mothers with substance abuse problem and receiving no prenatal  
14 care; our Start Prenatal Care program, designed to deliver  
15 comprehensive prenatal care services in the emergency room to  
16 pregnant women; our Health Start program designed to assist  
17 pregnant parenting substance abuses with the recovery process to  
18 promote self-sufficiency, healthy life styles, improved  
19 parenting, and family reunification; our Perinatal Substance  
20 Abuse project, which provides comprehensive services to 200  
21 substance abusing pregnant women and their children; and our  
22 Waiting List Reduction grant, which expands our outpatient drug  
23 treatment services by 220 treatment slots.

24         Dr. Molly Coye has clearly provided visionary  
25 leadership to the Department of Health Services. Her  
26 recognition that prevention will guarantee reduced costs puts  
27 her at the forefront of health reform, and places her in an  
28





1 invaluable position as this state fights to contain its budget.

2 Her commitment to California's future has been  
3 evident as she has sought input from providers and consumers.

4 I urge you to confirm her appointment as Director of  
5 the Department of Health Services.

6 CHAIRMAN ROBERTI: Thank you very much, Ms. Long.

7 Are there any questions?

8 Next witness is Sister Elizabeth Joseph Keaveney of  
9 Lynwood Hospital.

10 SR. KEAVENEY: Good afternoon. I'm Sister Elizabeth  
11 Joseph Keaveney, the President and Chief Executive Officer of  
12 St. Francis Medical Center in Lynwood, California, the large,  
13 disproportionate share facility in Southeast Los Angeles County.

14 I'm here today to ask you to confirm Dr. Molly Coye  
15 as the Director of Health Services for the State of California.

16 When Dr. Coye came to the State of California a year  
17 ago, her credentials preceded her. I think we all looked at  
18 those credentials and had very high hopes for what the future in  
19 California would be. When Dr. Coye came, she found herself in  
20 an atmosphere of limited resources and limitless needs. She  
21 began to analyze the situation of access to health care and  
22 health care policy in the State of California.

23 She found in that equation, I believe, three very  
24 important pieces of the equation, being the physician, the  
25 provider, and the patient. And she began right where she  
26 morally should have begun, with the patient: with access to  
27 health care.  
28





1                   When we come to the table, I think, as providers,  
2 physicians, to discuss issues, we all have a different end of  
3 the blanket, and we're tugging on it. There are limited  
4 resources and limitless needs, and if we don't focus on the  
5 individual, we are all potential patients, if we don't focus on  
6 the individual and access to health care, I feel we will do a  
7 grave disservice to the State of California and its future.

8                   I commend Dr. Molly Coye for beginning her program of  
9 access to health care on preventative medicine. Today, 25  
10 percent of the children in the State of California have no  
11 access to health care. Our programs in the schools and the  
12 public health programs have disappeared because of financial  
13 problems. I believe that the best that we could do for any poor  
14 child in an inner-city community is to keep them healthy.

15                   I feel that the days ahead for health care in  
16 California will be days of change, and change is uncomfortable.  
17 We need someone who has the vision of a leader to take us from  
18 the paradigm we now know as health care in the State of  
19 California into a new paradigm, where there will be access to  
20 basic health care, where we will speak about preventive services  
21 for our children, and family health care will be a right of all.

22                   I think that you have a woman before you who has come  
23 with impeccable credentials. She's a visionary leader. She's a  
24 woman of courage, and I trust her. And I believe that she will  
25 carry us through to access legislation [sic] in the State of  
26 California, which we will all be proud of in the years ahead.

27                   So I ask you to confirm her, and to thank her for  
28



1 what she's done in this first year.

2 Thank you.

3 CHAIRMAN ROBERTI: Thank you very much, Sister.

4 SR. KEAVENEY: I got up very quickly.

5 [Laughter.]

6 CHAIRMAN ROBERTI: You're escaping before you get the  
7 questions, but I think maybe you're safe.

8 SR. KEAVENEY: Senator Petris left.

9 CHAIRMAN ROBERTI: Yes.

10 Any questions? You're safe. Thank you.

11 SR. KEAVENEY: Thanks, Senator.

12 CHAIRMAN ROBERTI: Dr. Pat Salber, Emergency Room  
13 Physicians.

14 DR. SALBER: Hi, I'm Dr. Pat Salber, and I'm an  
15 emergency physician in active practice in San Francisco. I'm  
16 also the President-Elect of the California Chapter of the  
17 American College of Emergency Physicians, and I'm an active  
18 member of the California Medical Association.

19 I'm here today representing both of these  
20 organizations, speaking in strong support of the confirmation of  
21 Dr. Coye as the Director of the Department of Health Services.

22 As an emergency physician, and especially as  
23 President-Elect of my specialty society, I can tell you that I'm  
24 at the front line of the current crisis in health care. As all  
25 of you know, emergency departments have become the source of  
26 primary care for 5-6 million uninsured Californians, and  
27 emergency physicians really become their primary care doctors.  
28





1           Because of this experience, I really feel that I'm  
2 speaking from an informed position when I testify about the  
3 confirmation of Dr. Coye as the Director of the Department. I  
4 have actually had the opportunity to meet and talk with Dr. Coye  
5 on several occasions in her short tenure as Director, and have  
6 found her to be very accessible, concerned, and extremely  
7 knowledgeable about a broad range of issues.

8           I'm very impressed with her training and background,  
9 and I think we've heard a lot about that today, and I really  
10 don't need to say more. And I feel that the State of California  
11 is extremely lucky to have a person of her stature to serve as  
12 the Director of the Department of Health Services.

13           The emergency physicians are very interested in  
14 prevention. As a matter of fact, under my tenure, which will  
15 start in June, we're planning on making injury prevention one of  
16 our main public health issues. And we're delighted to have the  
17 possibility of a Director who is also interested in this.

18           We also feel that because of the huge number of  
19 extremely critical issues which are facing the public health  
20 community today -- and those range from the crisis of the  
21 uninsured, to environmental and toxic health hazards -- I  
22 believe it's very important that Dr. Coye's confirmation be  
23 confirmed as quickly as possible. We believe that any delay  
24 would only create additional hardships for those of us that are  
25 struggling on the front line and trying to continuously strive  
26 to serve the health interests of all of California's citizens.

27           I urge a quick confirmation of Dr. Coye.  
28





1 CHAIRMAN ROBERTI: Thank you very much.

2 Are there any questions of Dr. Salber? Okay, thank  
3 you, Doctor.

4 Next is Dr. Hoda Anton-Culver, U.C.L.A.

5 DR. ANTON-CULVER: Senator Roberti, Committee  
6 Members, I'm from U.C.I., by the way, University of California,  
7 Irvine, not from U.C.L.A.

8 CHAIRMAN ROBERTI: Excuse me.

9 [Laughter.]

10 DR. ANTON-CULVER: It's all right. They're both  
11 okay. The University of California is fine.

12 I'm offering today support of the appointment of  
13 Dr. Molly Coye as Director of the California Department of  
14 Health Services.

15 To give my support meaning, let me say a few words  
16 about myself and my reasons for testifying today.

17 My name is Hoda Anton-Culver. I'm the Director of  
18 Epidemiology at the University of California, Irvine, College of  
19 Medicine in the Department of Medicine. I'm also the Director  
20 of the Cancer Surveillance Program of Orange County.

21 My area of special competence is cancer epidemiology  
22 and cancer prevention. I do a lot of research in cancer  
23 epidemiology; I have a large program, and I also teach medical  
24 students preventive medicine and public health.

25 I'm a tenured professor. I have been at the  
26 University of California for 14 years.

27 My testimony today is in support of the confirmation  
28



1 of Dr. Coye as soon as possible. I give my support as a  
2 professional in the field, and not in any official capacity as a  
3 representative, official representative, of the University of  
4 California.

5 I have served as the President of the American Cancer  
6 Society, Orange County Unit, for several years. And I do  
7 understand cancer prevention, and the cuts in the Cancer  
8 Registry very well.

9 The Cancer Surveillance Program has grown and  
10 received international recognition mainly as a result of funding  
11 from the State Legislature and the California Department of  
12 Health Services. Thus, it was shocking to get a cut of 30  
13 percent in the Cancer Registry.

14 We recognize Dr. Coye as a major leader in the field  
15 of public health with outstanding professional credentials,  
16 stature, and has a wide perspective for public health and the  
17 management of public health.

18 The cuts in the funding for Dr. Coye's Department  
19 were beyond her control, however. She made the best possible  
20 decisions for distributing the cuts among the programs in the  
21 Health Department, even though these decisions did not receive  
22 unanimous support, and we didn't expect them to receive  
23 unanimous support. It was because of our belief in her genuine  
24 interest in cancer as a public health problem, and her  
25 responsiveness to our concerns for continuing our program, that  
26 we, in my program, and others in the statewide tumor registry,  
27 were able to turn to constructive ways to use the reduced funds  
28



1 in the most efficient ways and preserve many of the gains our  
2 programs have made over the past seven years.

3         The Cancer Surveillance Program of Orange County was  
4 the very first in the state, and I have been involved in the  
5 design of the statewide Cancer Registry. I was on the  
6 Governor's Ad Hoc Committee for the design of that program.

7         The result of the reduction of funds we have now  
8 actually pushed everybody in the state who is interested in  
9 cancer epidemiology and cancer prevention to go after federal  
10 funds. And if you look at the amount of federal funds that we  
11 attracted in the state to be spent in the state on cancer  
12 prevention and cancer control and research, you'll find that we  
13 got about ten times the amount of funds that are spent by the  
14 State of California on the Cancer Registry.

15         The Cancer Registry is very successful. It gained  
16 quite a bit of recognition. California is the best, not only in  
17 the state -- in the United States, but all over the world.

18         I want to conclude and then maybe you may have some  
19 questions. Despite my responsibility for a program that  
20 received a major cut in funding by the Department of Health  
21 Services, I want to assure you that I have full confidence that  
22 California has the best possible public health official for the  
23 job of Director of the Department of Health Services in the  
24 person of Dr. Coye. We cannot actually afford losing her.

25         Thank you.

26         CHAIRMAN ROBERTI: Thank you.

27         SENATOR MELLO: Mr. Chairman.





1 CHAIRMAN ROBERTI: Senator Mello.

2 SENATOR MELLO: Thank you, Mr. Chairman.

3 I was interested in your comments, and apparently  
4 expertise in the Cancer Surveillance Program. My question  
5 really is, first of all, let me ask you, what is the  
6 relationship between smoking and cancer, in your opinion?  
7

8 DR. ANTON-CULVER: Well, I think we all know that  
9 smoking is probably the number one risk factor as a cause for  
10 cancer, as well as other diseases as well. So, it's a big risk  
11 factor.

12 SENATOR MELLO: What was your feeling, then, when the  
13 Governor's proposed budget included transferring money from  
14 Prop. 99 that was used to try to curtail smoking, and transfer  
15 that money over to really another good program, Medi-Cal  
16 Perinatal Services, but from your own specialty, not in  
17 perinatal, apparently, but in cancer --

18 DR. ANTON-CULVER: Right.

19 SENATOR MELLO: -- were you frustrated and angered by  
20 this change?

21 DR. ANTON-CULVER: Quite, quite. And I think  
22 normally so. I don't expect anybody who is really trying to  
23 work on cancer prevention and see a reduction in funds that  
24 would go directly to smoking would be happy.

25 In fact, one of the projects that I am doing and  
26 involved in is with the Department of Education in Orange  
27 County, looking at smoking in 4th, 7th, and 10th graders. And  
28 our research program is quite successful. We are identifying



1 who are the high risk kids for smoking.

2 Now, saying that, and telling you that I really feel  
3 bad that there were cuts, I also feel that every program is  
4 going to have cuts when we have an overall cuts in the budget.  
5 I hope, however, that no programs will be deleted altogether.

6 I was thankful that we can still save some of the  
7 tobacco-related research projects in the state with the cuts,  
8 and you would be surprised how much people are becoming very,  
9 very innovative and getting a much better at doing research for  
10 less money.

11 I'll give you an example. When we had the regional  
12 registries, every one of them had a structure, and every one had  
13 an administration. One of the ways that we managed to cut  
14 budgets is to join registries together, so we would save some  
15 funds, but still register every cancer in the state.

16 So, there are really ways. One of the things that I  
17 did talk to Dr. Coye about is the possibility of reinstating  
18 some of those funds related to cancer in the future. And she  
19 did promise, and I think I have that in my letter, that -- and  
20 I'm expecting that to happen. And when the budget gets better,  
21 all of those kinds of programs that I am interested, and urge  
22 that would be reinstated, would get actually more funding.

23 The other way that we cut funds is by putting off  
24 some of the things that we can do later, and it's just a  
25 management of funds. And I think as long as we don't let  
26 something that is so important, such as maternal and child  
27 health, or cancer prevention, or Cancer Registry, drop off  
28





1 altogether, I think it's a matter of how we manage our dollar in  
2 this climate of really lack of funds or reduced funds, to keep  
3 all our programs in public health and preventive medicine. And  
4 that's the number one for me and people who are doing what I'm  
5 doing, to keep going and not to be actually closed.

6 I think it's just important that we do that.

7  
8 SENATOR MELLO: Let me ask you, did you communicate  
9 your frustration or feelings about this version of the funding  
10 from Prop. 99, funds to other programs away from tobacco  
11 smoking, to the Governor or to --

12 DR. ANTON-CULVER: Yes.

13 SENATOR MELLO: -- to Dr. Coye?

14 DR. ANTON-CULVER: Yes. I'm quite vocal. I write  
15 letters, and I'm -- yes, I am not happy with the reduction of  
16 funds. But I'm also quite aware of the fact that when you have  
17 decreased budget, whether it's at the state level, or county, or  
18 even at a very small operation, if I have a reduced budget, I'm  
19 going to try to make the best out of it until that budget gets  
20 in a better shape. I think that's where we are now.

21 SENATOR MELLO: So you did write a letter to the  
22 Governor and to Molly Coye; is that correct?

23 DR. ANTON-CULVER: Uh-huh.

24 SENATOR MELLO: You're really a person that's  
25 dedicated and has expertise in cancer and trying to curtail what  
26 I call the most disastrous disease. I think that we as a  
27 society and a nation have underfunded the research of cancer,  
28 and there's been a lot of lip service.





1 DR. ANTON-CULVER: You're right. I agree with you.

2 SENATOR MELLO: I'm not an expert, but I can tell  
3 you, I looked into the eyes of two of my sister that died from  
4 cancer. And there's nothing more agonizing to see death take  
5 about a year from the time they were diagnosed as having cancer  
6 until the final breath came, and their eyes closed, and they  
7 died.

8 To me, it's so cruel that we are not doing more to  
9 try to spare the lives of people. And cancer, as you said  
10 earlier, tobacco being the number one --

11 DR. ANTON-CULVER: Absolutely.

12 SENATOR MELLO: -- contributor, I just --

13 DR. ANTON-CULVER: I'll tell you, in this room, a  
14 majority of the people in this room, if you want to know for  
15 sure, about 75 percent of the people in this room have a  
16 relative who either has cancer now or died of it. And it's just  
17 a very bad situation to see that.

18 However, it's one of the conditions that we have to  
19 keep fighting for. It's not an acute thing.

20 SENATOR MELLO: Thank you for your comments. I  
21 appreciate your position on it.

22 DR. ANTON-CULVER: Thank you for asking the  
23 questions.

24 CHAIRMAN ROBERTI: Any other questions?

25 Thank you very much, Doctor.

26 DR. ANTON-CULVER: Thank you.

27 CHAIRMAN ROBERTI: I think we should break for ten  
28



1 minutes, then we will start up with John Dunn-Mortimer.

2 [Thereupon a brief recess was taken.]

3 CHAIRMAN ROBERTI: Next is Dr. Joyce Lashof, Dean  
4 Emerita of the School of Public Health, U.C. Berkeley.

5 DR. LASHOF: Thank you very much, Mr. Chairman and  
6 Members of the Committee. I'm Joyce Lashof. I'm the Dean  
7 Emerita of the University of California, School of Public  
8 Health, at Berkeley. I'm also currently the President of the  
9 American Public Health Association, and a member of the Steering  
10 Committee of the California Coalition for the Future of Public  
11 Health.

12 I empathize with Dr. Coye's position here, as once  
13 upon a time I was Director of the Department of Health for the  
14 State of Illinois and went through a similar process.

15 CHAIRMAN ROBERTI: So you have lots of sympathy.

16 DR. LASHOF: I appear here on my own behalf and on  
17 behalf of members of the public health community of California  
18 in support of Dr. Coye's appointment.

19 I've known Dr. Coye for more than ten years and have  
20 followed her career. We have served together on the Executive  
21 Board of the American Public Health Association, where Dr. Coye  
22 made an outstanding contribution.

23 Dr. Coye's background and training is exceptionally  
24 broad and uniquely qualifies her for the position as Director of  
25 Health Services. She has combined training in occupational  
26 health and environmental health sciences with training in family  
27 medicine, a unique combination.  
28



1           She understands the public health issues facing this  
2 state and the responsibility the Department has to maximize the  
3 utilization of resources to most effectively protect and promote  
4 the health of the people of California.

5           I am especially impressed with her commitment to  
6 community-based primary care, with a heavy emphasis on  
7 prevention, and to breaking down the various bureaucratic  
8 barriers that characterize our multiple, categorical, and  
9 fragmented programs.

10          Access to care is a priority for Dr. Coye, and she  
11 will seek to assure that the medical program -- the Medi-Cal  
12 program is run efficiently and effectively.

13          The position of Director of the Department of Health  
14 Services at a time of a budget crisis is a most difficult one.  
15 It is increasingly hard to find well qualified public health  
16 professionals willing to enter state service, and I admire her  
17 courage in assuming this position at this time.

18          Although everyone will not agree with every difficult  
19 decision Dr. Coye will have to make, we are confident that she  
20 will consult widely, will act fairly, and will put the interests  
21 of the health of the people of California foremost.

22          And I urge her appointment.

23          And I would also, if I may, read into the record a  
24 letter from Dr. Lester Breslau, former Dean of the School of  
25 Public Health at U.C.L.A., and former Director of Health  
26 Services of California during the Brown Administration. He  
27 writes:  
28





1 "I am writing to support  
2 strongly the confirmation of  
3 Dr. Molly Coye as State Director of  
4 Public Health. My perspective comes  
5 from having once served in that  
6 position by appointment of Governor  
7 Pat Brown, and from knowing Molly  
8 Coye's leadership in our nation's  
9 public health community.

10 "She is exceptionally well  
11 qualified to head the Department  
12 through her training, experience,  
13 and dedication to public health.  
14 Dr. Coye has knowledge of what is  
15 important, insight into how to get  
16 things done, and diligence to lead  
17 health efforts effectively in  
18 California.

19 "I am confident that she will  
20 bring the Department once again to a  
21 top position among the nation's  
22 public health organizations, and  
23 therefore hope that the Senate will  
24 confirm her appointment.

25 "Sincerely yours,

26 "Lester Breslau."

27 CHAIRMAN ROBERTI: Thank you very much.  
28



1                   Are there any questions of the Dean? Hearing none,  
2 thank you very much.

3                   John Dunn-Mortimer, AIDS Project, L.A.

4                   MR. DUNN-MORTIMER: Mr. Chair, Members of the  
5 Committee, I'm Dunn-Mortimer, representing AIDS Project Los  
6 Angeles. AIDS Project Los Angeles is a private nonprofit  
7 organization providing social services, health services, and  
8 education to people in Los Angeles County.

9                   Dr. Coye has worked with us to come up with brave  
10 proposals for new programs in this time of budget crisis. And  
11 I want to cite two programs that are either at least budget  
12 neutral if not cost savings to the state, and add benefits for  
13 people with HIV disease.

14                  The first is the subsidization of health insurance  
15 premiums for people with low incomes who have AIDS, who are  
16 spending down, and not only does it prevent a cost shift onto  
17 the state, but it also helps people maintain services with  
18 their current provider. So, it doesn't disrupt the provision  
19 of their care.

20                  Secondly, under the former Administration, if you  
21 were -- if you had AIDS, and you were on Medi-Cal, in order to  
22 qualify for home health care benefits, you first had to be  
23 hospitalized. That was like a strange policy, because the home  
24 health care program was designed to prevent hospitalization.

25                  Dr. Coye has moved and actually eliminated that  
26 requirement, so people with AIDS now can get home health care  
27 services much more easily.  
28



1           In terms of legislative and public policy issues,  
2 Dr. Coye was a very strong advocate within the Administration  
3 to urge the signing of AB 11 last year, which mandates AIDS  
4 education in California's secondary public schools. She also  
5 has advocated to maintain insurance protections for people with  
6 AIDS who face discrimination by health insurers.

7           Dr. Coye has brought together community  
8 organizations, like AIDS Project Los Angeles, to the table to  
9 form policy and make recommendations on program implementation.  
10 And she has gone out of her way to begin to develop a true  
11 partnership with private nonprofit organizations like AIDS  
12 Project Los Angeles.

13           Not only does AIDS Project Los Angeles represent  
14 the interest of people with HIV disease, we're 75 percent  
15 funded by individuals and corporations. And we also bring to  
16 the table the perspective of that part of the private sector.  
17 So, in including community organizations like ours, it's not  
18 just an outreach to the AIDS-affected community, but goes far  
19 beyond that.

20           And again, we strongly urge her confirmation.

21           Thank you.

22           CHAIRMAN ROBERTI: Thank you very much.

23           Are there any questions? Hearing no questions,  
24 thank you, Mr. Mortimer.

25           MR. DUNN-MORTIMER: Thank you.

26           CHAIRMAN ROBERTI: Helyne Meshar, AIDS Project  
27 Hollywood -- West Hollywood.  
28





1 MS. MESHAR: Senator Roberti and Members of the  
2 Committee, I'm Helyne Meszar, and I'm representing the City of  
3 West Hollywood.

4 The City has a very unique population, in that 30  
5 percent of our population are seniors, and 30 percent of the  
6 population of the City are gay and lesbians. We have eight  
7 percent of all of the AIDS cases in the County of Los Angeles  
8 within our city boundaries, and we have two very effected  
9 populations that are underserved populations in terms of health  
10 care.

11 We're here to support the confirmation of Dr. Coye  
12 because, on a policy level, her dedication and her ability to  
13 work with the City has been very positive. She has been very  
14 accessible, and she has been very inclusive in terms of the  
15 work that the City does with some of the nonprofit, community-  
16 based groups in the City.

17 On a more personal level and local level, this  
18 year, because of both the work of Senator Roberti -- as you  
19 know, our Adult Day Health Care Program was a very difficult  
20 project to start, but with the cooperation, and the help, and  
21 the patience of the Department of Health Services, the City  
22 opened for this year the first ever in the nation an Adult Day  
23 Health Care Program that serves both seniors and people with  
24 AIDS. It's a very innovative program, and a very creative  
25 program, and it's a program that the Department has worked with  
26 us on and has been very patient, because it was a very, very  
27 difficult project to start up since it was the first project --  
28



1 first time ever this kind of project started.

2 We have -- the City has been impressed with  
3 Dr. Coye's commitment to prevention, and to community-based  
4 programs, and to expansion of access to care for people. And  
5 with that, we would support her confirmation.

6 Thank you.

7 CHAIRMAN ROBERTI: Thank you, Ms. Mesnar.

8 Are there any questions? Hearing none, thank you  
9 very much.

10 I think we have a couple more fans, and then maybe  
11 we'll get to it. Laurie McBride, LIFE AIDS Lobby.

12 MS. McBRIDE: I'm Laurie McBride, Executive  
13 Director of the LIFE AIDS Lobby, otherwise known as the Lobby  
14 for Individual Freedom and Equality.

15 We have 90 members statewide who are affiliates of  
16 our organization. We represent AIDS service providers as well  
17 as gay and lesbian community groups, community organizations.

18 I'm very pleased today to be here in support of  
19 Dr. Coye's confirmation as Director of the Department of Health  
20 Services. We have great respect for Dr. Coye's knowledge of  
21 HIV issues, and her willingness to work with AIDS advocacy  
22 groups statewide on issues such as -- you've just heard from  
23 other supporters, but specifically, we at the LIFE Lobby want  
24 to commend Dr. Coye's commitment to community involvement in  
25 regional planning and decision making in response to the HIV  
26 epidemic.

27 Especially, we want to talk today about the  
28





1 community involvement typified by the Ryan White Care Act Title  
2 2 Consortia. The Ryan White Care Act provides federal care and  
3 treatment dollars for cities hardest hit by the epidemic. I  
4 think most of you are aware of this. But a lot of Californians  
5 don't know that the Ryan White Care Act also provides funding  
6 that goes directly to each state to provide care and treatment  
7 for nonurban areas, the areas not hardest hit, but still  
8 definitely in need of care and treatment dollars for the  
9 epidemic. This money comes under Title 2.

10 In response to receiving these Title 2 monies, the  
11 State of California embarked on creating a very unique model  
12 in partnership with the Office of AIDS, and the leadership of  
13 the Office of AIDS. It was a model of local involvement and  
14 organization.

15 Since Dr. Coye has come to California, she has not  
16 only supported this process, she has strengthened it. Each  
17 county or region creates an HIV consortia. Criteria is set on  
18 consortia membership, which includes community-based  
19 organizations, service providers on the front line of the  
20 epidemic, and people with AIDS themselves of all colors. Each  
21 consortia selects a fiscal agent, conducts local needs  
22 assessments, and votes on funding decisions for the monies  
23 received.

24 California's plan has become a national model. Now  
25 only in their second year of implementation, these HIV  
26 consortia have already become a remarkable testimony to the  
27 commitment of hundreds of volunteers and their continuing work  
28





1 to bring cost effective and live saving services to people with  
2 HIV statewide. These monies and this process now allows all  
3 communities in California to develop a community-based  
4 cooperative model of private-public partnership: 37 consortia,  
5 representing each and every county in the state are now up and  
6 running, developing a statewide infrastructure to combat the  
7 epidemic.

8 As Dr. Coye herself can testify, while many local  
9 health officers welcome community involvement, many do not.  
10 They're not quite so appreciative.

11 Recently there have been end run attacks on the  
12 consortia process, specifically trying to cut out the community  
13 involvement and the voting membership of people involved in the  
14 consortia.

15 On behalf of all the consortia, we want to support  
16 Dr. Coye's support of the consortia process, and our continued  
17 involvement in it. We think that we bring important news and  
18 decision making guidelines from the front lines, and that our  
19 place at the table helps the state save money and provide more  
20 effective services.

21 We know and applaud Dr. Coye's readiness to listen  
22 to and seriously address the concerns of HIV advocates  
23 statewide, and we want to urge her confirmation today, and let  
24 her know that we value her support and look forward to it in  
25 the years ahead.

26 Thank you.

27 CHAIRMAN ROBERTI: Thank you very much,  
28



1 Ms. McBride.

2 Are there any questions? Thank you.

3 The next witness is Brent Barnhart.

4 MR. BARNHART: Mr. Chairman and Members, my name is  
5 Brent Barnhart. I represent Blue Cross of California.

6 I'll try to be very succinct. It's been a long  
7 afternoon.

8 Essentially, what I wanted to add to the testimony  
9 you've already heard is that among the many things which Molly  
10 Coye has brought to her position has her involvement of large  
11 private insurance companies, such as ours, in addressing very  
12 real public problems. Basically encouraging us, imploring us,  
13 involving us in dealing with such issues as access for infants  
14 and mothers, for the new Check-Up Program, which we hope to get  
15 underway which involves dealing with the needs of the children  
16 of this state.

17 That is, I think, an indication of her pragmatism  
18 in dealing with that's available to her, particularly in these  
19 rather mean budgetary times. How do you draw on private  
20 resources to enhance the state's efforts?

21 Particularly on the eve of what we expected to be  
22 major changes in our health care delivery system of a design  
23 none of us know at this point, it's really critical that  
24 somebody of her vision, and compassion, and her pragmatism is  
25 in this position.

26 CHAIRMAN ROBERTI: Thank you very much,  
27 Mr. Barnhart.

28



1 Are there any questions? Thank you.

2 California Nurses Association.

3 MS. CAPELL: Beth Capell with the California Nurses  
4 Association.

5 We're here as well to urge confirmation of  
6 Dr. Coye. We have found her open and accessible. She has  
7 reached out to nursing in a way that no other Director of the  
8 Department of Health Services has in our memory. She has  
9 spontaneously supported nursing and its central role in the  
10 delivery, management, and planning of health care in a way that  
11 we have literally not seen before.

12 She has worked with us on a broad range of issues,  
13 from AIDS, to maternal and child health, to access. And  
14 specifically on the access issue, she has reminded us of  
15 something very important, which is that we can solve the  
16 problem of providing coverage for everyone and still not solve  
17 the problem of access. That is, it will require substantial  
18 work on the delivery system in order to assure access for all  
19 Californians.

20 For that reason, we are supporting her  
21 confirmation.

22 CHAIRMAN ROBERTI: Thank you very much.

23 Are there any questions? No questions.

24 Also, I have letters in support from Health Net and  
25 from the California Association of HMOs.

26 I believe that is the conclusion of the witnesses  
27 in support.  
28





1           Now we generally will take up witnesses who are  
2 concerned, and we have one, Mr. Arnolando Torres.

3           MR. TORRES: Members, my name is Arnolando Torres,  
4 representing the California Hispanic Health Care Association,  
5 which has 20 clinics with 30 sites. We also represent the  
6 doctors who in the mid-levels who are in these clinics, as well  
7 as the patients that we treat. The majority of those patients  
8 happen to be of Latino and Black backgrounds, ancestry and  
9 ethnic backgrounds, migrant farmworkers.

10           We are in a very difficult position in view of the  
11 fact that 17 other witnesses have come before you, many  
12 colleagues, professional colleagues of Dr. Coye. It has been  
13 made very clear that there's a very positive relationship that  
14 the Doctor has with Alameda County. I think four or five of  
15 the witnesses were from Alameda County. That's very positive.

16           We were very troubled in the beginning of the  
17 tenure of Dr. Coye. We were very concerned with the interview  
18 that appeared in the Los Angeles Times of October 27th.  
19 Especially troubled by the responses that were given to the  
20 questions of:

21                       "How does your Department intend to  
22 address the shift in the AIDS  
23 epidemic into the less affluent,  
24 less educated, often minority  
25 populations?"

26           We were concerned with the response of:

27                       "How do you get prevention messages  
28



1                   to immigrant and minority  
2                   communities?"

3                   We have and are extremely well aware of the  
4 operations of the Department of Health Services. We know every  
5 program that they operate. We try to work with the Department  
6 and have been very fortunate that there are many people who  
7 work for Dr. Coye who have been extremely helpful in sitting  
8 down and discussing matters with us. That process continues to  
9 be improved on, and we're very pleased about that.

10                  We are not here today to indicate to you that we're  
11 concerned that there have been budget cuts. We're not here to  
12 indicate to you that we're concerned that our programs have  
13 been reduced.

14                  What we're here to talk about is the concerns that  
15 we had up until February. Some of these concerns persist to  
16 this day. We were concerned that that consultation process,  
17 that many of the witnesses prior to myself have talked about  
18 existed with them, we're very pleased that it existed with  
19 them, but regrettably, we did not feel that it existed at all  
20 at the level of detail that we felt was necessary on many of  
21 the issues we were addressing: Healthy Start, the AIDS issues,  
22 the outreach, the tobacco education media campaign.

23                  Virtually every program that this Department has,  
24 we are concerned with ensuring that it is in fact reaching the  
25 populations that they to target, and that they are serving the  
26 populations in the most cost effective manner.

27                  In February, we are pleased to say that with the  
28





1 assistance of Jim Belshay and Terry Parker at the Agency, we  
2 were assisted in establishing a much more open dialogue with  
3 Dr. Coye. Since February, we have enjoyed the opportunities to  
4 discuss many more issues than we had prior, with herself as  
5 well as with her deputies. And we want to indicate for the  
6 record that we're very appreciative for the work that Ron  
7 Joseph has extended to a lot of the concerns that we've raised.  
8 We hope that that relationship continues

9           We are very pleased that we've had an opportunity  
10 to meet with Dr. Coye now and have begun a dialogue to address  
11 many of the issues that we have raised in writing to you all.  
12 We are and continue to be very committed to ensuring that  
13 farmworkers are given some attention, not necessarily in  
14 resources, but that we are trying to assess what is the best  
15 way to deal with the population that continues to have  
16 problems, and is getting worse in view of the economic and  
17 natural disasters that have afflicted them.

18           We continue to be concerned about the issue of  
19 maximizing these programs of outreach to the population, and we  
20 are very concerned because we look at the details; we look at  
21 the very detailed implementation of programs. And it appears  
22 as if, in all honesty, in the last two months, the relationship  
23 has been much better. The communication has been better. It  
24 is our hope that this new relationship, or this new dialogue  
25 that we've embarked on with Dr. Coye continues. We hope that  
26 it will be based on substance, and we hope that our concerns  
27 will be responded to in a substantive manner.  
28





1                   And as we wrote to you in our letter, it is our  
2 hope that the process we've embarked on with Dr. Coye brings  
3 about a more integrated system which respects and includes  
4 divergent and key providers of care in communities of concern.  
5 The concerns we represent are not self-interest, and need to be  
6 heard objectively by Dr. Coye and her Department.

7                   We will be keeping you abreast of the developments  
8 on this process, and urge your support for this effort on our  
9 part.

10                  It is difficult when you compare what 17 people  
11 have said. They all represent impressive associations. They  
12 are people that we work with as well. Some have said things  
13 that, to some extent, we probably are contradicting with our  
14 statement right now.

15                  But we want this Committee, and we want Dr. Coye,  
16 to understand that we're not involved in this effort of  
17 advocacy on the part of our community for the sake of being  
18 liked, or for the sake of having phone numbers.

19                  We're concerned that the issues we bring of  
20 substance be addressed in an arena, and that they be addressed  
21 on a substantive basis.

22                  We feel much more positive about what has happened  
23 in the last month and a half, two months. It is our hope, as  
24 we say in the letter, that this new dialogue will in fact  
25 continue.

26                  And we raise this last point. The last Director of  
27 the Department of Health Services was also a doctor. He did  
28



1 not enjoy the type of support that Dr. Coye has enjoyed today,  
2 with 17 witnesses in support and two letters of support.

3 Dr. Coye brings, as one witness said, a refreshing  
4 perspective because of the extensive and well documented  
5 qualifications and experiences that she has.

6 We simply want to make sure that we -- we simply  
7 want to make sure that the expectations that we have are  
8 reasonable, are fair, and that in fact, they are what is in the  
9 best interest of the State of California, and specifically in  
10 the best interest of the Latino population we are most  
11 concerned with. And that is exactly where we're coming from,  
12 and that is specifically the degree of our concerns.

13 We hope this Committee will continue to review how  
14 things happen. Health is an extremely complex and  
15 controversial issue, but we will not be at this table to  
16 advocate to you that we're upset with Dr. Coye because she  
17 hasn't given us money. That is not our concern.

18 We want to be heard; we want to contribute; we want  
19 to participate as partners on a level of respect and of  
20 dignity. And I think that is the crux of the direction and  
21 perspective that we carry.

22 Again, things have improved, and we are very  
23 hopeful that they will continue to go in that direction.

24 If there's any questions --

25 CHAIRMAN ROBERTI: Senator Mello.

26 SENATOR MELLO: Mr. Torres, you represent a lot of  
27 constituents that are in my area, as well as farmworkers, and  
28





1 so forth.

2           Has it been your experience that in order to have  
3 access, that we speak so much about, that general clinics and  
4 persons offering health services to those constituents, namely  
5 farmworkers and others that work longer hours, the hours have  
6 to be more flexible so they have evening hours, and you can --  
7 you know, a certain number of evenings per week, and even on  
8 weekends, where people can get in?

9           My experience is that people are working as much as  
10 twelve hours a day, Monday through Saturday, in many cases, and  
11 just can't have access to the health services that are  
12 available in our areas.

13           MR. TORRES: Yeah, there's no doubt. Many of the  
14 clinics who are federally funded, as well as state funded,  
15 operate with those flexible hours. These are things that  
16 Dr. Coye is very well aware of, having done a lot of academic  
17 work in the Valley. She knows many of the clinic directors in  
18 Coachella. She knows several of the clients, specifically the  
19 clinics that I represent here today.

20           The concern that we've had on the farmworker is  
21 that prior to Dr. Coye coming on board, you've had four years  
22 of drought; you've had a freeze; you've had the white fly;  
23 you've had the flight of agricultural jobs leaving to Mexico;  
24 you have had the earthquake. And we have yet to see any  
25 specific, concrete action from the state that attempts to  
26 address that issue.

27           We're not looking at resources. We're looking at  
28





1 leadership that says, "Okay, let's put together a task force  
2 that allows us to examine the implications for the farmworker  
3 population in view of all these things, and let's work with the  
4 federal government to try to see if in fact they can put more  
5 resources in this state."

6           There's a Farmworker Coordinating Council that  
7 Polanco legislation created. Regrettably, that is not the  
8 exclusive mission of that Coordinating Council. It's  
9 bureaucracies, and only one group of nonprofits are involved in  
10 that effort.

11           These will be things that we want to discuss with  
12 Dr. Coye in subsequent meetings that we are pursuing with her  
13 now. She has been very participatory in the cooperative  
14 agreement process with a number of the clinic associations that  
15 have a lot of interest with farmworkers.

16           But again, we have yet to see the movement in this  
17 direction. And again, we're not -- we don't have the  
18 expectations of new monies. What we have is that expectation  
19 of some leadership, of acknowledgment that this problem exists,  
20 and trying to prepare for how to deal with it the best way we  
21 can with what we've got.

22           SENATOR MELLO: Let me ask you another question.

23           Again, in your opinion, do you think that there's a  
24 greater need in reaching the constituency that you mentioned by  
25 having an outreach program that could inventory family health  
26 needs, and try to refer them to appropriate medical services?

27           MR. TORRES: Yeah. This is -- this is what I think  
28



1 Dr. Coye's attempting to do with the managed care approach.

2           The concern that we've had with managed care  
3 systems is that in order for clinics to get into that, there's  
4 going to have to be technical assistance, and there's going to  
5 have to be some investment in trying to develop the  
6 infrastructure in order for these clinics to get into managed  
7 care, or in fact to create managed care systems on their own.

8           Again, this is an issue that many clinic  
9 associations have raised, and I'm sure it is not at all new to  
10 Dr. Coye. But it is an issue that we are going to be looking  
11 for some substantive response from the Department to understand  
12 if, in fact, they're going to be able to assist clinics in  
13 being able to create those types of systems that are helpful.

14           The other point on farmworkers, and this is an  
15 issue that we, again, will try to raise in great detail to  
16 Dr. Coye, and again, I think she's very well aware of it, and  
17 that is, you have a lot of categorical programs that are not  
18 focusing enough on the farmworker population. One of those  
19 that we've discussed with her is the AIDS program. We are  
20 finding more and more farmworkers that are getting hit by HIV  
21 positives, or simply having AIDS cases in their communities.  
22 They are going back to Mexico, taking the illness with them,  
23 infecting other family members in villages. There are a number  
24 of articles that have been appearing in national newspapers  
25 throughout the country.

26           We feel that there has to be a way to try to  
27 integrate that element into what the Office of AIDS is doing.  
28



1 And if it's not a question of money, then maybe it's a question  
2 of trying to have primary care clinics be more responsive in  
3 trying to work with the clinics to do more than what they've  
4 been able to do to date in the AIDS issue with farmworkers.  
5

6 But again, this is another issue that we want to  
7 try and embark on with Dr. Coye, and try to move on in a  
8 positive, constructive fashion.

9 SENATOR MELLO: Thank you very much.

10 MR. TORRES: Thank you, Senator.

11 CHAIRMAN ROBERTI: Senator Petris.

12 SENATOR PETRIS: Usually when you appear before us,  
13 you're representing another group, and that is on  
14 discrimination problems in state government, or lack of  
15 affirmative action.

16 Have you seen any problem in the Health Department  
17 with respect to that? I understand there have been some  
18 complaints, but I realize it's the biggest department we have,  
19 so I'd be surprised if there weren't some. But there have  
20 been, I understand, some complaints, some lawsuits, some people  
21 have left.

22 Have you run across that in your review of this  
23 Department?

24 MR. TORRES: This Department, as you said, has  
25 historical difficulty with moving Hispanics and hiring  
26 Hispanics. It has been very far down on the scale according to  
27 the State Personnel Board's statistics and reports.

28 The changes in this Department have primarily come





1 about as a result of the budgets. At one time, Dr. Kizer,  
2 through the Deputy Director Kubanski, created a specific  
3 position to deal with Hispanic hiring. He actually brought in,  
4 in essence, like a special assistant to deal with it.  
5 Regrettably, the budget reductions required this position to be  
6 deleted.

7           We are not aware of any initiatives that have been  
8 taken by the Department in and by itself to ensure that the  
9 state force reductions do not result in any disproportionate  
10 impact on minorities in the Department.

11           But at the same time, we are not aware that the  
12 Department has pursued a policy that is attempting to be any  
13 more unfair to this population than any other population of  
14 workers in their system.

15           SENATOR PETRIS: What about Black minority members?

16           MR. TORRES: There are and continue to be some  
17 outstanding cases, and some that will probably come in a few  
18 months, or in some time, that are coming from Black  
19 individuals, Black state employees. But again, we have not  
20 found that this is a problem that can be associated with  
21 Dr. Coye. This is -- a lot of that have been there prior. I  
22 think the outgoing Administration recognized that by trying to  
23 hire more people to specifically be concerned with recruiting  
24 and actually hiring.

25           But the state reduction in work force has really  
26 put a squash on the -- on all of those positive efforts that  
27 were going to be undertaken, had they been able to stay in  
28



1 place.

2 SENATOR PETRIS: Thank you.

3 MR. TORRES: Thank you.

4 SENATOR CRAVEN: All right.

5 Is there anyone else who is due, other than the one  
6 that I have, which is Dian Kiser, American Heart Association?

7 MS. KISER: Good afternoon, Committee Members. My  
8 name is Dian Kiser, and I'm representing the American Heart  
9 Association, California and Greater Los Angeles Affiliates.

10 First, let me tell you that, like many other people  
11 here today, I'm in total respect of Dr. Coye's credentials.  
12 They are absolutely more than reputable. I appreciate the work  
13 she's done with the Heart Association regarding our Food  
14 Festival.

15 But we're here today to talk about Prop. 99, and as  
16 you know, the Heart Association is involved in risk factor  
17 control of cardiovascular disease. And we were very active in  
18 the passage of Prop. 99. And at this particular time, we have  
19 serious reservations regarding the way these components are  
20 being implemented.

21 This particular area of responsibility comes under  
22 the Department of Health Services, led by Dr. Molly Joel Coye.

23 First, there's been a refusal to sign the contract  
24 to continue the media campaign, which the Department of Health  
25 Services has cited as a motivating factor for 33,000  
26 Californians quitting smoking. This campaign is specifically  
27 mandated by the Legislature.  
28



1           Dr. Coye's Department canceled a \$1.8 million  
2 contract with the American Lung Association, and the Lung  
3 Association had won this contract to help people quit smoking.

4           The cancellation came six hours after the American  
5 Lung Association filed a legal action seeking to compel  
6 Dr. Coye and Governor Wilson to obey the law and execute the  
7 media contract.

8           The Department of Health Services has withheld  
9 important scientific research conducted at the University of  
10 California at San Diego on the effectiveness of Proposition 99  
11 health education program. We believe this action has deprived  
12 the people of California from important, live-saving  
13 information, and represents political interference in the  
14 scientific process.

15           There has also been a reluctance by her Department  
16 to release in a timely manner the data collected at the  
17 University of California, San Diego, on tobacco use in  
18 California to other researchers who want to use this  
19 information to improve public health.

20           The American Heart Association is concerned that  
21 there's a reduction or elimination of funding for the U.C. San  
22 Diego Tobacco Use Survey, because one of the investigators  
23 presented some of the results of their research, namely that  
24 tobacco use has dropped 17 percent in California as a result of  
25 Proposition 99 at an open, scientific meeting of the American  
26 Heart Association in Galveston, Texas.

27           In addition, the Heart Association has received  
28





1 some calls, some troubling reports, of threats of funding cuts  
2 to organizations who have received funding through Prop. 99 if  
3 they publicly discuss the Administration's attempts to redirect  
4 Prop. 99 health education funds.

5         These concerns have led the American Heart  
6 Association to consider questioning Dr. Coye's confirmation.  
7 We are indeed concerned, but we would like to suggest a  
8 positive alternative. That would be to defer her confirmation  
9 until she has had an opportunity to remedy the problems that  
10 have been created in implementation of Prop. 99.

11         During this period, we would hope that the  
12 following would occur: to execute the media campaign and the  
13 contract that has been awarded, and see that the contractor can  
14 continue to use the campaign free of political interference; to  
15 also reinstate the American Lung Association's contract; to  
16 reverse the cutbacks on the University of San Diego Tobacco  
17 Survey and see that the contract is renewed with no change in  
18 scientific leadership; and also to drop efforts to reduce the  
19 health education account below the 20 percent of tobacco tax  
20 revenues mandated by the people of California when they passed  
21 Proposition 99.

22         If these concerns can be resolved in her  
23 Department, we would anticipate that the American Heart  
24 Association would support her confirmation.

25         In any event, we respectfully request that the  
26 opportunity be given for resolution of these concerns.

27         Thank you for your consideration.  
28



1 CHAIRMAN ROBERTI: Thank you very much, Ms. Kiser.

2 I think we'll have Dr. Coye respond to everything  
3 at the conclusion of the witnesses.

4 Is there anyone here in opposition? I don't see  
5 any opposition.

6 I have a few questions myself.

7 Many of the community health care organizations  
8 have expressed degrees of concern on their budgetary portions,  
9 which is understandable. And my question is, are you working  
10 on a system distribution for equitable allotment of health care  
11 dollars to the community care organizations, which really are  
12 for many people, especially in poorer neighborhoods, a primary  
13 source of health care?

14 DR. COYE: Yes, Senator. I think I know what  
15 you're referring to.

16 For the last 15 years, at least the last 10 years,  
17 there's been a federal program allowing cooperative agreements  
18 between states and the federal government for support of  
19 primary care. And for some reason, that had never been done in  
20 California.

21 When I came in, we pushed that through and got the  
22 cooperative agreement established last fall. That brought in  
23 \$900,000 of new federal money in support of primary care.

24 One of the first tasks of that cooperative  
25 agreement is to come to a consensus agreement among the primary  
26 care clinics on criteria for distribution of further funding,  
27 so that this will be on an objective, openly reviewed basis.  
28



1 We're very concerned, especially given the shortage  
2 of funds and the hard feelings that often result from that,  
3 that the process be above reproach. So, we are working that --  
4 working on that. I've been to the meetings myself, and we're  
5 coming up with criteria for the distribution of funds.

6 CHAIRMAN ROBERTI: Very good. And those will be  
7 established, or are you going to publish those, or are they  
8 going to be --

9 DR. COYE: I assume so. We haven't specified it,  
10 but it certainly --

11 CHAIRMAN ROBERTI: So that everybody knows the  
12 process.

13 DR. COYE: -- all the clinic associations are  
14 represented in the process, and we'll let them all know.

15 CHAIRMAN ROBERTI: Very good. I guess that also  
16 gets to the other point that was raised, I believe, by  
17 Mr. Torres, but it's sort of a subliminal concern from many  
18 organizations, that you maintain a continuing dialogue in the  
19 allotment of contracts and specification of services, and  
20 things of this nature, which I take it is going to be your  
21 policy.

22 DR. COYE: I can only express my puzzlement, since  
23 Mr. Torres was in on a number of many meetings that I had last  
24 fall in which I became acquainted with many of these groups,  
25 including the ones that he represents.

26 CHAIRMAN ROBERTI: You talked about the federal  
27 dollars. I assume that includes also state contracts pursuant  
28





1 to state money, you will follow the same --

2 DR. COYE: No, this was for the --

3 CHAIRMAN ROBERTI: -- the same process.

4 DR. COYE: Yes, expanded access to primary care;  
5 all the monies that we would have any influence over.

6 CHAIRMAN ROBERTI: Very good.

7 With shortening budget dollars -- I'll ask you a  
8 question that I don't necessarily have a good answer when  
9 people ask me, but still I think we have to address the  
10 question -- what are we going to do --

11 [Laughter.]

12 CHAIRMAN ROBERTI: -- as far as health care? I  
13 mean, are there efficiencies? Are there any, you know, rabbits  
14 that you can pull out of the hat, or something where we can  
15 expand health care, especially in areas that aren't currently  
16 serviced with obviously a reduction in the budget?

17 DR. COYE: There's -- I think that there are two  
18 sides, or two ways to answer that.

19 Ultimately, to truly solve the problem of access to  
20 care for everyone in the state, we probably will need new  
21 money, because -- at least initially, in the first five to ten  
22 years. The reason for that is that we have now almost 7  
23 million uninsured. We have 4-1/2 million on Medi-Cal, which  
24 significantly underpays for major parts of -- in comparison to  
25 the usual, customary fees for physicians and many other  
26 providers.

27 We also have under insurance, in the sense of a lot  
28



1 of people who can't afford their co-pays and deductibles.

2           So, while there are clearly major efficiencies and  
3 savings to be made in restructuring the health care system,  
4 whether you could do those first in enough way to generate  
5 enough of the money that you wouldn't need to prime the pump  
6 with start-up money is highly questionable.

7           So, I would hold that at least in the first decade  
8 of major health reform, we probably will need new money up  
9 front, and that represents a major challenge for Governor  
10 Wilson, for Russ, and for myself, that we very much want to  
11 make major inroads on, if not solve, this problem, and we are  
12 faced with a situation that none of us anticipated in terms of  
13 the depth of the crisis that we're in right now.

14           There is a second half to the issue of reform,  
15 however, and that's restructuring the system. Restructuring  
16 the system can make inroads in all three of the traditional  
17 areas that we worry about: cost, quality, and access. It also  
18 can help to solve something which I believe the public is  
19 rightfully very concerned about, which is not usually named  
20 under those, which is security: people who know that their  
21 health benefits today may not be much help to them a year or  
22 two from now.

23           So, we can, and actually through what the Governor  
24 proposed in his health reform package, we'll do many of these  
25 things. Uniform billing to simplify the system enormously.  
26 Developing practice guidelines so that we begin to target  
27 effective practices in medicine. A state purchasing pool, so  
28



1 that we can bring down the cost to small employers of health  
2 insurance.

3           The market insurance reform that the Governor  
4 proposed will do a great deal to stabilize the market. In  
5 itself, that won't make insurance a lot more affordable; the  
6 pool will do that, but it will at least make it less like that  
7 we'll have the same escalating rates of uninsureds we currently  
8 have.

9           So, I would not stay in government service if I  
10 didn't think there were things you could do in tough times.  
11 There's no satisfaction from making absolutely terrible cuts in  
12 programs that you know are very good.

13           The reason to be involved in it is for the changes  
14 that you can make, and to have those changes make sense and be  
15 coherent in building towards the possibility when you'll have  
16 money to invest.

17           CHAIRMAN ROBERTI: Thank you, Doctor. That's very  
18 encouraging.

19           Let's see if I have any other questions. No, I  
20 guess I do not.

21           Senator Mello.

22           SENATOR MELLO: I wanted to -- Senator Morgan, in  
23 introducing you, said something that sort of caught me ear.  
24 She said, "Don't hold against Dr. Coye budget decisions that  
25 have not yet been made."

26           She's talking, I guess, about the forthcoming  
27 budget.  
28





1 I think what people are concerned about, it's not  
2 happening in the forthcoming, but the Governor's budget that  
3 was introduced took money away from Prop. 99, the tobacco  
4 money, and shifted it over to perinatal care, away from  
5 programs that would have helped heart and cancer diseases,  
6 which is our number one and number two killers in the United  
7 States. And also, the early Check-Up Program that took \$44  
8 million out of the mental health program.

9 Now, my question to you, then, to what extent were  
10 you -- what advice, or were you consulted by the Governor in  
11 regard to the transfer of these funds?

12 DR. COYE: Okay, yes. And I'd like to go back and  
13 address in some greater detail, particularly the Prop. 99  
14 issues, because I know you, and Senator Roberti, and Senator  
15 Petris are all concerned about that and very interested in  
16 seeing the development of stronger public health programs over  
17 time.

18 CHAIRMAN ROBERTI: Actually, if I could interject  
19 one thing on Senator Mello's point, on the Proposition 99  
20 money, I favor the whole concept of public health as the money  
21 is being used; however, a concern of mine is that the public  
22 clearly voted for what I think was understood to be education  
23 programs, as Ms. Kiser, I believe, had indicated. And I think  
24 that's an aspect of it as well.

25 That point doesn't necessarily, in my mind, become  
26 the Department's decision as to the prioritization of dollars,  
27 but frankly, we received our instructions as to what to do.  
28



1                   If you could sort of address it also in that  
2 context, I'd appreciate it.

3                   DR. COYE: Yes, and I think there were some other  
4 things raised earlier that I'd like to address, too.

5                   First of all, let me state unequivocally, my  
6 background, all my work for a long time has been in public  
7 health. And there is no question about the link between  
8 tobacco smoking and many serious diseases, including cancer.  
9 There's no question that this is an absolutely imperative  
10 public health problem, along with AIDS, and many other  
11 imperative health problems. It's something which I have worked  
12 a great deal on. I've taken controversial stands in support of  
13 eliminating tobacco smoking in many situations in the past.

14                  And I believe very much that the program in  
15 California has been an enormous success; has been something  
16 very, very important. And I can say this, because I didn't  
17 have a hand in creating it, that those of you who did have a  
18 hand in creating it, created something that really is a  
19 national model and is terribly important, and is very, very  
20 successful.

21                  That's why it is even more painful for me to come  
22 into a situation like this and face the necessity of proposing  
23 a redirection of funds.

24                  And of course, the Governor consulted with me. I  
25 would have been insulted not to be consulted on a decision like  
26 this.

27                  But that also makes it all the more painful. I  
28



1 can't hide on this one. This is a tough decision, and this is  
2 part of what you do if you are in these kinds of positions, is  
3 have to deal with it.

4 I'd like to go through, though, the rationale of  
5 why we made that decision and share with you the thinking  
6 behind it.

7 First of all, I think it's very important to  
8 understand that this was only one of two -- or actually there's  
9 a couple of other smaller -- but two major purposes of the  
10 initiative in the legislation that actually enacted the  
11 initiative. Over 68 percent of all of the tobacco tax monies  
12 goes to pay for care for the medically indigent. The public  
13 saw a very important purpose in health education. They also  
14 saw as important or maybe even a more important purpose in  
15 terms of taking care of people who are medically indigent.

16 What we have proposed in redirecting monies is to  
17 move more monies from the health education account into the  
18 care of the indigent. And so, I would argue that it is  
19 consistent with the overall intent of the initiative, but what  
20 it has done is alter the proportion.

21 That requires a four-fifths vote. It requires your  
22 decision. It is a proposal. And I think it merits not only  
23 here but in the future, prolonged, detailed discussions about  
24 exactly what the advantages and disadvantages of such a  
25 redirection would entail.

26 It's a very serious decision, and it is not a  
27 decision that we take unilaterally. It's one that ultimately  
28





1 you all will have to be involved in making as well.

2 I also think it's important to recognize that the  
3 services that we are targeting in terms of the redirection  
4 include specifically things such as AIDS, the increase in  
5 testing in AIDS, the OBRA prenatal care program and county  
6 medical services program, caseload expansion, which do meet the  
7 definition in the initiative of new state-only services, rather  
8 than back-filling Medi-Cal, and things like that.

9 After going over this and reviewing it more  
10 carefully, we decided that that made a much more appropriate  
11 fit in terms of the intent of the legislation.

12 We also are leaving major parts of the programs  
13 intact. The health education account will still have \$55  
14 million in this current year, and \$45 million in the budget  
15 year. So that in fact, this is not stripping this. It's  
16 somewhat like, unfortunately, my analogy to the Cancer  
17 Registry, in the sense that we are attempting to keep the core  
18 there, and in fact, a very hefty core, much bigger than any  
19 other state in the country, even on a per capita basis, is  
20 spending on education, on cancer, and cigarette smoking,  
21 keeping that intact.

22 I take personal responsibility particularly for the  
23 decision on the media campaign. When we faced the necessity to  
24 make these kinds of budget decisions, we looked at two options.  
25 One was to primarily cut the community groups, and the second  
26 was to go after the media account, the media campaign. And in  
27 that regard, because I do believe very firmly that this is a  
28



1 temporary, one or two year redirection of the funds, the  
2 question was: where are you going to do less damage?

3           You can't do no damage with either of the cuts.  
4 Neither of these cuts are defensible because they're not doing  
5 damage. Both of them are hurting something that's important  
6 that you want to do.

7           But in my experience, and I'm sure yours, working  
8 with community groups, to take down a community group for a  
9 year or two may make it impossible ever again to build that up  
10 again. Community groups lose heart. They don't continue to  
11 hang together if they don't have some wherewithal.

12           A company that runs media campaigns, you can cut  
13 the contract for a year or two, and then you can come back and  
14 negotiate with them and start it up again.

15           So, that was the basis of that thinking.

16           Now, the media campaign is important to the  
17 community group work, just as the media campaign would not be  
18 effective without the community group work. So, an alternative  
19 would be to cut half of each, to do a little of each. And that  
20 may arguably be a better approach, but I think it's important  
21 that you understand what my thinking was in having to make that  
22 very difficult decision.

23           I also would like to add that I am completely  
24 unaware and doubt what has been told to you about the American  
25 Lung Association. They have, if I understand correctly, a \$1.9  
26 million contract for media outreach, which was augmented  
27 further by \$450,000. Actually even more than, Senator Petris,  
28



1 you were mentioning. That's still in effect here. It was due  
2 to expire on October 30th. There has been no cancellation, and  
3 I'm informed that no proposals were received for further  
4 funding. And that funding cycle has passed now.

5           So, I'm not sure what your reference is to. It's  
6 extremely disturbing. I mean, it really is not the kind of  
7 thing I ever would want to have done. It's certainly not the  
8 kind of thing that I, or the Agency, or my deputies would ever  
9 involve themselves in that kind of retribution.

10           And if you can give me further information, I will  
11 look into it, because I would take it very seriously.

12           SENATOR PETRIS: Well, I'm very pleased to hear  
13 that. It was repeated by the American Heart Association.

14           DR. COYE: I know, but I don't know where this  
15 comes from.

16           SENATOR PETRIS: And in both instances, the  
17 information that came to me was, that within six days after the  
18 filing of a lawsuit -- six hours.

19           DR. COYE: Right.

20           SENATOR PETRIS: Excuse me, six hours --

21           DR. COYE: There has been no --

22           SENATOR PETRIS: -- it was canceled out.

23           DR. COYE: -- cancellation.

24           SENATOR PETRIS: Well, then that needs to be  
25 checked out.

26           DR. COYE: And I will get back to you right away on  
27 that.  
28





1           SENATOR PETRIS: I'll be very happy to apologize  
2 for throwing that at you if it turns out to be the other way.

3           DR. COYE: And I certainly would apologize if it  
4 turns out that that happened, but I don't believe that it  
5 happened.

6           SENATOR PETRIS: Well, see, that came to me as a  
7 series of two or three actions that to me seemed to be very  
8 harsh. One of them, suppression of the research reports of the  
9 University of California. Another one, some legislative  
10 offices were told that they couldn't answer any questions on  
11 this 99 thing, and employees felt frightened and intimidated.

12           Now, I don't have names, but that could be checked  
13 out. My office is not one of them.

14           But there were -- Department of Health Services's  
15 contract monitors informed Prop. 99 contractors that the Lung  
16 Association's legal action will cause all the contractors to be  
17 defunded. And of course, if they win the lawsuit, it'll  
18 probably have the opposite effect.

19           And the question is, do you know anything about  
20 that? Are they acting with your knowledge or any of your top  
21 deputies' knowledge?

22           From what I've heard from you so far, I would -- it  
23 would kind of be very difficult to believe that, but it's been  
24 alleged. And part of this hearing is to clarify those things  
25 and make sure we get the right picture.

26           DR. COYE: If I could address a couple of those,  
27 unless you have another -- because I think that is in the same  
28



1 category with some of the other things that were raised by the  
2 Heart Association. I would like to do that.

3 SENATOR PETRIS: Yes, I'll let you answer those. I  
4 won't go into it any further.

5 DR. COYE: Just in no particular order, the issue  
6 of the contract monitors, that certainly isn't anything that we  
7 had ever intended, or said, or issued. And it came to me as a  
8 rumor. You know, some friends called and said, "Have you heard  
9 what people are saying?" And I made every effort through our  
10 staff to find out, and from all of the management down to the  
11 direct program management, I was told that, no, there is no  
12 such word that's gone out.

13 Now, if we -- you know how delicate this is. If  
14 it's possible to get the names of anybody who actually said it,  
15 then we can backtrack. But I made very --

16 SENATOR PETRIS: I'll do some backtracking also.

17 DR. COYE: Okay. I did make very personal efforts  
18 to try and make it clear that anything like that absolutely out  
19 of the question.

20 The second issue is the issue of the release of  
21 research. What happened was a 24-hour hold on the release of  
22 the report, because when it came out, we hadn't even heard  
23 about it; it hadn't gone through internal clearance; I hadn't  
24 read it; nobody had looked at it except the program, and we  
25 said we need to look at this.

26 Actually, it was less than 24 hours. About 12  
27 hours later I said, "I don't care. I'm not going to wait until  
28



1 I get in the office to look at it. Release it now, because we  
2 can't stand to have the word out there that we're sitting on  
3 research on something like this." But in essence, the damage  
4 was already done by simply having held it in order to try and  
5 find out what it was.

6 And I've apologized to a number of people on the  
7 Tobacco Education Council for that, and we have made it since  
8 that date available to the press, available to the rest of the  
9 research community, and everybody else.

10 SENATOR PETRIS: So all those that were involved in  
11 the story have been released?

12 DR. COYE: Yeah.

13 Another issue was the issue of funding for  
14 research. I think something in San Diego was mentioned.

15 There have been no cancellations retributive -- in  
16 retribution or otherwise that I'm aware of.

17 There has been -- there have been contracts that  
18 have ended. I will go back and look into each of those, but  
19 there is absolutely no intent to take action on anything as a  
20 result of our proposed redirection.

21 There have been in the case of community groups,  
22 community groups who are currently ending their cycle and  
23 therefore not being refunded because of reductions in the  
24 health education account as the result of the three-year  
25 redirection that the Legislature and the Administration agreed  
26 on last year and that was enacted in AB 99 and the Governor  
27 signed last fall, that is now working its way through as those  
28





1 contracts end. But it's in no way keyed to the proposed  
2 redirection now. But those two things may get confused.

3 SENATOR PETRIS: I didn't mean to interrupt Senator  
4 Mello. I was following a point on the same question, so you go  
5 ahead.

6 SENATOR MELLO: Okay, well --

7 SENATOR PETRIS: I have questions on other  
8 subjects.

9 SENATOR MELLO: She was answering my question  
10 about, I was anxious to see what role she played in the  
11 redirection of the funding from Prop. 99 and also from the  
12 mental health program to perinatal care and the early Check-Up.

13 I guess, as you explained it, then, it was your  
14 recommendation to redirect the funds that influenced the  
15 Administration, then, to do that; is that correct?

16 DR. COYE: We were faced with the necessity of  
17 cutting funds, and I had already cut \$300 million in our  
18 Medi-Cal program. I was at the point where --

19 SENATOR MELLO: Let me try to get this straight.  
20 I'm talking strictly about Prop. 99.

21 DR. COYE: Yes.

22 SENATOR MELLO: The funds there, the money comes in  
23 from the tobacco tax.

24 DR. COYE: Right, but I was trying to explain how  
25 we made that decision about the Prop. 99 redirection, is that  
26 it was not that we knew we had to make cuts, and so we headed  
27 immediately for the Prop. 99 funds.  
28



1                   What happened is, having made the \$300 million of  
2 cuts in Medi-Cal, we then faced cutting into prenatal care, or  
3 like the OBRA program, our AIDS testing, a whole series of  
4 things where I felt at that point all programs should start to  
5 bear the weight. At that point, we looked at the Prop. 99  
6 accounts to propose redirection.

7                   So, it was not a -- it was not a first choice to go  
8 after the money in that. It came up very late in the process.  
9 Really when we were to the point of choices that were fully as  
10 painful as that choice.

11                  SENATOR MELLO: Usually in a year like this, when  
12 we're really, as everyone knows, we're just short of money for  
13 our budget, and then some, we hardly look at any new or  
14 expanded programs because we don't have the money to fund them.

15                  I mean, here's a situation that we're taking money  
16 away from programs that the testimony here from Dr. Anton-  
17 Culver and the lady from the Heart Association, all testified  
18 that those programs, the money being used there, cut down  
19 smoking by 17 percent, and no doubt had tremendous savings to  
20 California by people cutting back on smoking.

21                  I said earlier about in my own family, between  
22 heart and cancer, it wiped out my entire family. I'm the sole  
23 survivor from a large family. And I've had my own arterial  
24 sclerosis problem myself, but it was hereditary from my family.

25                  But it sort of doesn't make sense, I think -- and  
26 this is my own judgment versus your professional judgment -- to  
27 continue to short-fund programs that are the number one killer,  
28



1 number two killer in our society, and offer a brand new  
2 program, and very much needed. Perinatal is needed, so is  
3 early Check-Up and all the others.

4 But to me, it just doesn't make sense to cut way  
5 back on programs that have such a direct effect on the  
6 population of California. That's where I think I disagree with  
7 your decision, but I don't have the professional basis to  
8 evaluate.

9 Now, I just want to follow another line of  
10 questioning. I did hear you on the air, oh, about three weeks  
11 ago on KCBS. It was a taped program from George Harris. I was  
12 going to catch a plane to go to Burbank that morning, so here I  
13 had the radio on, and you -- it was a very interesting program.

14 But several things that you mentioned there, you  
15 said we couldn't afford -- we can't afford universal health  
16 care. I think that was one of your statements. And you used  
17 the word, "managed competition", which is a word that caught my  
18 ear, because I don't know yet what "managed competition" might  
19 mean as far as health care.

20 And the third point, and you might just cover this  
21 briefly in a response, is, the Governor announced his health  
22 plan last week, on April 13th, and I had a chance to read it  
23 over. And of course, my colleague, Senator Petris, introduced  
24 Senate Bill 36, which is truly a universal health plan. You  
25 were quite critical of that plan, as I recall the conversation.

26 But the Governor's plan is voluntary, Senator  
27 Petris, as he's introducing it. It's not mandated at all.  
28





1 Employers don't have to. It'll offer a pool to buy insurance  
2 on a voluntary basis, but everything we have now is voluntary.  
3 These 7 million people that are uninsured currently in  
4 California, they can go out and buy health insurance, they just  
5 can't afford it.

6 But if you could just comment, because this is  
7 going to be important, I think. The vogue issue of '92 is  
8 universal health care.

9 It's embarrassing that California and the United  
10 States finds itself in only the company of South Africa in  
11 providing no health care for all of our people. It's really  
12 embarrassing.

13 We have money to make grants and loans all over the  
14 whole world to people who have a good health care plan, and  
15 here we are here at home without one.

16 So, I'd just like to have you just give us a little  
17 bit of your philosophy on how you think we're going to meet the  
18 needs of covering the people, the 7 million people in  
19 California, in a way that will have a delivery system that'll  
20 work.

21 DR. COYE: I have all of my life in public health  
22 supported work towards a national health program of some kind,  
23 and as a member of the Executive Board of APHA, American Public  
24 Health Association, we strongly support that and have been  
25 monitoring various proposals federally on that topic.

26 When I first came to California, knowing the  
27 history of AB 350, and all of the various attempts in  
28



1 California in the past to solve this problem, and in my  
2 discussions with Governor Wilson, given his interest in this  
3 area, his interest in trying to solve it, I had certainly seen  
4 and still do see us working towards a solution in the State of  
5 California.

6           What has hit everybody like running into a wall of  
7 bricks is the economic crisis that we're facing right now.  
8 Given that crisis, I don't believe that this year is the year  
9 to impose significant new employer mandates or payroll tax as  
10 another way of sort of a mandate in the sense of an economic  
11 burden that would support the cost of health insurance just in  
12 this state.

13           It pains me to say that, because I have, in New  
14 Jersey and here, always thought that when the national  
15 government just clearly wasn't going to be able to deliver, you  
16 ought to try and make steps in the states to do something about  
17 it.

18           But I also believe, because of my background in  
19 occupational health, that just about the worst occupational  
20 disease is unemployment. And that to seriously risk many more  
21 families not having jobs because this economic burden is too  
22 much to impose in one state at this time is a risk that I feel  
23 very uncomfortable with from a public health point of view.

24           We have certainly tried in the budget to protect  
25 the basic core of health services, but we're in a situation  
26 where we can't even provide, given the economics of the state,  
27 for the medically indigent and Medi-Cal people everything that  
28



1 we think they need, how we're going to come up with the  
2 financing to float care for all of the rest of the population  
3 is at least an economic decision that I think we have to weigh  
4 very, very carefully.

5           And as I explained earlier, I think that we can  
6 make major changes while we're in the middle of tough times.  
7 We can make structural changes so that our system looks more  
8 like the kind of system you would want to operate if you could  
9 afford to solve the access problem. Specifically, if I can  
10 take a second to refer to what you were referring to in terms  
11 of Senator Petris's proposal, my specific -- I don't know if  
12 you wanted to say anything before I --

13           SENATOR PETRIS: Well, yeah, if you don't mind.

14                           [Laughter.]

15           SENATOR MELLO: Maybe you ought to wait, because  
16 he's surely going to ask the question.

17           SENATOR PETRIS: What my bill does is the same  
18 thing you're doing with Prop. 99. It's redirection.

19           Under my bill, we'd take the same amount of money  
20 that we're now spending -- \$72 billion on health care premiums  
21 and all -- and redirecting it in a more efficient manner. So,  
22 we both like redirecting in the health field.

23                           [Laughter.]

24           SENATOR PETRIS: That's the only comment I want to  
25 make at the moment.

26           DR. COYE: Okay.

27           But to explain the qualms that I had, is that I've  
28





1 actually spent a fair amount of time looking at the Canadian  
2 system, because I think it's a very important one and it's been  
3 very successful on its own terms, and I've read the GAO study  
4 and a lot of other things that would be important to be aware  
5 of in evaluating it.

6 My primary hesitancy is, I ran an all-payer system  
7 in New Jersey, a hospital rate setting system, essentially.  
8 And what the Canadian system is, it's negotiating separately  
9 with the hospitals and the physicians. And I think that -- and  
10 this is what I mean by managed competition -- I think we can  
11 actually do better than that.

12 I agree very much with the idea of working towards  
13 a system where everybody is guaranteed health insurance. And I  
14 think that it is a government responsibility to make sure that  
15 that happens. And I want to be very clear --

16 SENATOR PETRIS: Does that mean you'll be  
17 continuing activity and interest on your part trying to find  
18 the best solution?

19 DR. COYE: Definitely. That is -- when I talked to  
20 the employees of the Health Department in my first week on the  
21 job, and I said, "What did I come here to work on?" Number  
22 one on my list was to solve the access problem.

23 SENATOR PETRIS: See, the thing that impresses me  
24 with the GAO study, and the New England Journal of Medicine  
25 report, is, without cutting one penny in doctor fees or  
26 hospital fees, or any medical provider, by simply centralizing  
27 the paperwork, we save \$63 billion a year nationally,  
28



1 according to one study, and \$83 billion nationally according to  
2 the other. That's before you even get to the question of how  
3 can we be more efficient in the operation of our hospitals, and  
4 our individual offices, and our clinics, and so forth.

5 But anyway, we'll talk about that another time.

6 DR. COYE: Okay.

7 SENATOR PETRIS: I'm glad that Senator Mello raised  
8 the question, because I've written you a letter on that and  
9 asked you where do you think we should go, what can we do, and  
10 so forth.

11 DR. COYE: Right.

12 SENATOR PETRIS: So, we'll come back to that.

13 DR. COYE: I would look forward to that.

14 SENATOR PETRIS: Thank you.

15 SENATOR MELLO: I'll turn the Chair over to Senator  
16 Petris.

17 SENATOR PETRIS: I'd like to get on to a couple  
18 other things.

19 Well, let me start with questions from a doctor in  
20 my area who is active in the San Francisco -- he's not active  
21 in it, but he has informed me about a change in the -- I guess  
22 that's a budget move, but it's in the California Children's  
23 Services regional office, merging that with Sacramento.

24 We seem to go through this kind of thing every once  
25 in a while. We had a running battle on transferring a lot of  
26 people from the Health Department in Berkeley up here to  
27 Sacramento, and some of them are still going back and forth  
28



1 everyday on the bus.

2           This particular communication indicates how many  
3 counties are presently being served by that office in the  
4 Children's area, and it's 24 counties. And he's expressing the  
5 fear that if that is the closed -- he doesn't say it's going to  
6 be closed, he says it's threatened. It appears to be on the  
7 horizon -- it would be a tremendous setback for patients and  
8 families, and so forth, in all that basin covered by that  
9 regional office.

10           Can you comment on that?

11           DR. COYE: Yes. In the short run, his concerns are  
12 alleviated, that as we went through working on this issue, it  
13 turns out that that wasn't something that got targeted for  
14 closing now or consolidation.

15           Long-term, however, I really wouldn't want to  
16 construe my answer as offering reassurances, because I think  
17 that as we go through the next two years in the health system  
18 in the state, we're going to be looking at restructuring a lot  
19 of things. And this would not be at all targeted at the San  
20 Francisco office. I have no idea what will fall out of the  
21 woodwork in terms of how the reorganization would have the  
22 implications for that.

23           SENATOR PETRIS: So that's still in a problematic  
24 stage?

25           DR. COYE: No, no.

26           SENATOR PETRIS: It's still a problematic stage as  
27 to what's going to happen?  
28





1 DR. COYE: No, it's not now. It's in normal  
2 status, no challenge to it now. But I don't want to make that  
3 sound as though I'm guaranteeing for three years that there's  
4 no changes.

5 We have no plans to target it for anything, but we  
6 may make changes in the CCS system, working with the CCS  
7 advocacy groups, that might imply some changes for that office.

8 SENATOR PETRIS: Well, let me read the sentence  
9 here. Maybe it's mistaken. I mean, I see I got some mistaken  
10 information before, so --

11 DR. COYE: No, he wasn't mistaken. We were  
12 thinking about it, but as we went through further looking at  
13 the CCS organization, we decided we didn't need to do that.

14 SENATOR PETRIS: I see, okay. Thank you.

15 We all kind of center our attention on our own  
16 stuff, legislation that we've carried. And fortunately, I've  
17 had a lot of legislation in areas in which you've been very  
18 active long before you came here to California, I'm happy to  
19 say.

20 One of my bills, SB 495, a few years ago, had to do  
21 with the Occupational Health Program within -- I forget. I  
22 think it's within OSHA, but I'm not sure.

23 DR. COYE: Did you establish HESIS, the one that's  
24 in Cal-OSHA funded, but over in the Department of Health?

25 SENATOR PETRIS: Yes, it has to do with  
26 occupational-related injuries and diseases, and so forth, the  
27 flow of information and all that.



1                   How's that coming along? I've been hearing stories  
2 that it's been crippled and cut back.

3                   DR. COYE: Let me --

4                   SENATOR PETRIS: Can you just tell me what's  
5 happening there?

6                   DR. COYE: First of all, I want to be really clear,  
7 because part of it is general funds that comes through the  
8 Department of Health Services for the Occupational Health  
9 Program, and part of it comes through DIR to Cal-OSHA to HESIS,  
10 and I don't know which piece you're referring to.

11                  SENATOR PETRIS: I was involved in both of them,  
12 but let me see. It's specifically relating to SB 495, which is  
13 way back in 1985. It's called the California Occupational  
14 Health Program within the Department of Health Services, and  
15 it's to investigate the causes of work-related injuries and  
16 illnesses.

17                  DR. COYE: Right, so it's not the DIR part, it's  
18 our part directly.

19                  SENATOR PETRIS: That I was involved in also.

20                  DR. COYE: I think what you're referring to is  
21 personnel actions that occurred within that program.

22                  I've actually known that program for a long,  
23 because when I started the Occupational Health Clinic at San  
24 Francisco General, I knew some of the people involved who  
25 actually were doing occupational health before that even got  
26 established as a formal program. And when I worked with NIOSH  
27 up to '85, I knew a fair amount about it, and in professional  
28



1 associations, have kept in contact with some of those people.

2           There was -- there were some personnel changes, and  
3 from my review -- and I looked at this when I came back in and  
4 had a thorough presentation on all the programs currently  
5 ongoing -- it looks like to me we've actually strengthened the  
6 program in the reorganization. It is my training and my  
7 background in an area that I would care about very much.

8           In New Jersey, as a matter of fact, we did so well  
9 in that area, and I'm receiving the annual award from the  
10 American Conference of Governmental and Industrial Hygienists,  
11 which is the highest association of hygienists in the country,  
12 in June, in recognition of what we achieved in New Jersey.

13           I have no desire to not do as well here. I care  
14 about it very much.

15           SENATOR PETRIS: Are you getting a lot of reaction  
16 from those changes, personnel changes?

17           I understand one of the doctors believes that it's  
18 a very serious disruption of the program, to the point of  
19 irreremedial harm, which is a pretty severe analysis.

20           DR. COYE: Unfortunately, that individual is  
21 currently -- has brought grievances and is going through a  
22 personnel process. I think it's the Skelley hearing now. But  
23 because that is their opportunity to present their side of the  
24 story, this person's side of the story -- and you know, there  
25 are different sides to a story -- I don't want to prejudice the  
26 outcome of that. We will be investigating it fully.

27           The only thing that I can comment on in this case  
28





1 is the allegations brought against the individual. And they  
2 are -- I can actually describe them, but I'd rather not. They  
3 are very serious.

4 SENATOR PETRIS: No, I wouldn't want to ask you to  
5 go into that.

6 DR. COYE: They're very serious, so we are taking  
7 this issue very seriously and looking into it.

8 SENATOR PETRIS: Okay.

9 I have one or two others. I think we covered the  
10 rest pretty well.

11 Now, in connection again with this Prop. 99, I  
12 guess it's going to be around for a long time. I am told that  
13 at one point, when the League of Women Voters of San Francisco  
14 got involved in this issue and arranged for a public discussion  
15 of it in San Francisco, the Department was going to take a part  
16 in this. I guess the League was actually sponsoring it. And  
17 everything was ready to go, and all of a sudden, it was  
18 canceled.

19 DR. COYE: They canceled it?

20 SENATOR PETRIS: Allegedly because the Department  
21 changed its mind and wasn't going to participate.

22 Now, I don't have a date on that, but does that  
23 ring a bell?

24 DR. COYE: Yes. I didn't know it got canceled.

25 SENATOR PETRIS: It was on those Prop. 99 cuts.

26 DR. COYE: No, I know. And I've actually spoken  
27 fairly widely on it in meetings, on radio, in the newspaper,  
28



1 and everything, on this. I don't shrink from these occasions.

2 I know on this occasion that neither I nor my  
3 deputies could go, and I know that I suggested that we request  
4 our Program Director, Dileep Ball, to do, or Jackie Durrer,  
5 who's the person under him who works. I didn't hear back  
6 whether they got to go.

7 If nobody was available and that's what resulted,  
8 I'm very sorry, but I didn't know that that --

9 SENATOR PETRIS: The allegation is that the League  
10 of Women Voters, along with other groups, planned a forum.  
11 They invited the Governor -- the Governor's Office, and you or  
12 your office, and the critics of the program, to all come  
13 together and discuss the issues. And on the day before it was  
14 to take place, it was suddenly canceled after calls from  
15 employees of the Department.

16 DR. COYE: You mean --

17 SENATOR PETRIS: Including calls from employees of  
18 the Department, including my good friend Betsy Hite, allegedly,  
19 which led them to conclude that they should cancel the meeting.

20 The question is, do you have any knowledge of that?

21 DR. COYE: I'm absolutely sure that there was no  
22 communication from me or Betsy, or any of our staff, suggesting  
23 that they ought to -- that we wanted them to cancel it. There  
24 may have been a communication that we couldn't provide someone  
25 of a level that they thought was appropriate, despite our  
26 efforts.

27 I think -- I have no idea who was offered to go,  
28



1 and I can get back to you with that -- or to them, but we were  
2 trying to arrange for the League for Jackie --

3 SENATOR PETRIS: I'll have to get back to you, too.

4 DR. COYE: Yes, but this was not anything other  
5 than scheduling issues. Because I have broadly written,  
6 spoken, appeared, participated in discussions of this kind.

7 SENATOR PETRIS: Well, I know you've been on  
8 national t.v., for that matter. I know you've discussed it  
9 publicly.

10 DR. COYE: It's not the way I first wanted to be on  
11 national t.v.

12 SENATOR PETRIS: Let me ask you a general question.  
13 I think this is probably my last.

14 Senator Mello touched on it. It has to do with  
15 priorities, and extremely painful things you've had to do in  
16 making these cuts.

17 I can see that you didn't get any joy out of this  
18 at all.

19 Suppose the recession ends very soon, and hopefully  
20 we get lots of money. What are your priorities on the use of  
21 the additional money? Let's say it's more than we ever had  
22 before.

23 DR. COYE: I feel -- I have a four-year-old, and I  
24 feel like some of these questions: a little bit more; a lot  
25 more; or a lot, lot more?

26 [Laughter.]

27 DR. COYE: I would say probably, if it was a  
28





1 moderate amount more, just restoring some of the things we've  
2 had to cut would be a big step forward.

3 If it's truly a lot more, if it's the kind of order  
4 that California used to have -- and I don't know if we're ever  
5 going to go back to that economically -- but if it was really  
6 on that order, my highest priority is making sure that if there  
7 are further steps in prevention that are even more important  
8 than access, that we do those first; things that we know are  
9 even better.

10 SENATOR PETRIS: That would still be a high  
11 priority?

12 DR. COYE: Yeah, and then to solve the access  
13 problem.

14 SENATOR PETRIS: Yeah.

15 DR. COYE: Because I also -- and I've said this to  
16 my staff in staff meetings a lot, and publicly to the  
17 California Association of Public Health North, and others -- I  
18 really think until we solve the access problem, we'll never be  
19 freed of the sort of monkey on our backs of the problem about  
20 access in order to devote all our attention to prevention,  
21 which is really what our training is.

22 SENATOR PETRIS: I can't help but say that, along  
23 with the others, I'm very impressed with your credentials, and  
24 your background, and your track record. Pesticides, for  
25 example, I've been involved in that for years and years. I'm  
26 grateful for what you've done in another arena for that.

27 This doesn't apply to you, but this is just my  
28



1 parting comment, and you can answer if you like, but it's  
2 probably directed more to all of my colleagues.

3 I've said this in subcommittee meetings on the  
4 budget: when we get into a crunch like this, it makes us long  
5 for the good-old days when those liberals were in charge, and  
6 all they did to solve the problems was throw money at it.

7 And my answer is: at least we had money to throw  
8 at it.

9 [Laughter.]

10 SENATOR PETRIS: We did a better job of managing  
11 the economy, so to speak. So, let's keep that in mind, too,  
12 that everytime we have to scramble and fight each other to  
13 equitably allocate meager resources, I think of the days when  
14 we didn't have to do that.

15 That's why I asked you, if you got a whole bunch of  
16 money, what would you do.

17 So, I thank you, and I wish you well.

18 CHAIRMAN ROBERTI: Thank you, Senator.

19 I'd like to also comment that we have on file 43  
20 letters in support, as well as numerous instances of the  
21 Members being importuned by supporters --

22 [Laughter.]

23 CHAIRMAN ROBERTI: -- supporters of Dr. Coye. Too  
24 numerous to document.

25 Do I hear a motion?

26 SENATOR MELLO: Mr. Chairman.

27 CHAIRMAN ROBERTI: Senator Mello.  
28



1           SENATOR MELLO: I'd like to have the Committee  
2 honor -- Senator Petris and I both spoke about it. Her due  
3 date is not until May the 29th, but I don't want to hold her up  
4 any longer than necessary, because I do plan, as I told her, to  
5 support her, when I first met her and I saw her excellent  
6 credentials.

7           But I think we have here a very important issue  
8 that Leg. Counsel would like to analyze the agreement that  
9 Mr. Gould only sent in yesterday. And the people on the other  
10 side haven't had a chance to review it, and neither has  
11 Legislative Counsel.

12           So, as soon as they both would indicate to the  
13 Chairman that they're ready to put it back on calendar --

14           CHAIRMAN ROBERTI: Do we know when that will be  
15 ready?

16           SENATOR PETRIS: Probably the first two or three  
17 days of next week. That was immediately FAXed to them so they  
18 could start on it right away.

19           CHAIRMAN ROBERTI: Out of deference to one of the  
20 Members, which is our custom, we do put the hearing over.

21           I will not take any more testimony, absent a  
22 revolution, which I don't expect happening, there will be no  
23 more testimony.

24           Dr. Coy has sat not only through her hearings, but  
25 Mr. Gould's hearings as well. It's beyond the call of duty at  
26 some point.

27           So, no more testimony, short of some enormously  
28





1 revolutionary document, which I don't anticipate. And we will  
2 put it over until next week, first item on the agenda, for vote  
3 only.

4           SENATOR PETRIS: There's a problem, Mr. Chairman.  
5 We may not get the response back since they just got the  
6 document yesterday.

7           CHAIRMAN ROBERTI: Assuming that the response will  
8 be back, yes.

9           SENATOR MELLO: I'll be out of the state next week,  
10 but it's all right.

11           CHAIRMAN ROBERTI: Well, frankly, I think we can  
12 still take it up. I'll be in communication with you, Senator.  
13 If you have a problem, we will defer to you, and we'll put it  
14 over for a week.

15           SENATOR MELLO: I will defer to the Chairman and  
16 Nancy Michel.

17           As long as -- I think what we all had in mind,  
18 certainly I did, is that your memorandum of how the  
19 adjudicatory hearing would proceed with, and then the persons  
20 who were on the other side, would both set forth their letters  
21 of understanding, and they would then go into the Journal. So,  
22 it would not have the force of law, but at least it would  
23 reflect what the understanding was.

24           They just have not had a chance to look at  
25 Mr. Gould's, and they do find some discrepancies in his  
26 statement.

27           CHAIRMAN ROBERTI: So, one week before we vote,  
28



1 I'll call. I will speak to you, Senator --

2 SENATOR MELLO: All right.

3 CHAIRMAN ROBERTI: -- in case you're not in  
4 Sacramento at the time.

5 If the document is not ready, then I guess it will  
6 be two weeks, but I'm going to do everything I can to make sure  
7 that it's ready so we can get the show on the road.

8 So with that, Senator Mello moves that the  
9 confirmation be put over for vote only next Wednesday, assuming  
10 that the document from Legislative Counsel that was drafted  
11 during the Gould confirmation, is before us.

12 Without objection, such will be the order.

13 Thank you, Doctor.

14 DR. COYE: Thank you.

15 [Thereupon the Rules Committee  
16 acted upon legislative items on  
17 the agenda.]

18 CHAIRMAN ROBERTI: We will return to confirmations,  
19 Richard Andrews, Director of the Office of Emergency Services.

20 DR. ANDREWS: Good afternoon, Senator Roberti and  
21 Members of the Committee.

22 I've been in state service for eleven years, having  
23 joined an earthquake preparedness project in 1981, when I left  
24 a position as Professor of History at the University of  
25 Redlands. The goal of this project was to begin earthquake  
26 preparedness from the ground up, from the neighborhood and  
27 individual level on up through the state. And part of that  
28



1 process, I was involved in neighborhood preparedness, local  
2 preparedness, business and industry preparedness in Southern  
3 California.

4 In 1982, I was appointed Executive Director of the  
5 State's Seismic Safety Commission, and served for  
6 two-and-a-half years during the Coalinga earthquake. At that  
7 time, I guided the Commission and the Legislature in the  
8 enactment of legislation following Coalinga that dealt with the  
9 Central Services's buildings, that dealt with school  
10 preparedness, that dealt with hospital preparedness.

11 In 1984, I joined the Office of Emergency Services  
12 as an Assistant Director. I continued in various capacities in  
13 Southern California until I was appointed Director in July of  
14 last year.

15 My background leads me in several directions, and I  
16 think gives me several specific qualifications. First, my  
17 focus has always been on local governments and local government  
18 needs. I believe the heart and soul of the Emergency Services  
19 system in California is at the local level, and I believe that  
20 the role of the state is to support local governments in these  
21 activities.

22 Because of my background in the earthquake area,  
23 I'm very interested in multidisciplinary emergencies, that when  
24 large emergencies happen, we need to be prepared to have law,  
25 and fire, and police, and emergency medical, and local  
26 officials involved in the response process.

27 In the eight months that I've been Director of the  
28





1 Office of Emergency Services, in addition to trying to deal  
2 with the budget crisis that we all face, we have one of the --  
3 one of the state agency missions that is subject to very  
4 unpredictable demand. I began in the middle of a state of  
5 emergency for the Sierra Madre Earthquake. Two weeks later, we  
6 had the Cantera spill in Siskiyou and Shasta Counties. Two  
7 months later, the catastrophic fire storm in the East Bay  
8 hills, the largest traffic accident in U.S. history, the  
9 largest sewage spill in U.S. history, and most recently, a  
10 major flood in Southern California.

11 So, I bring to this assignment a broad experience,  
12 knowledge, and support of local governments, knowledge of the  
13 state system, and a commitment to making the Office of  
14 Emergency Services, which is the only state agency that has  
15 representatives of all the various disciplines that are  
16 involved in public safety, to make the Office of Emergency  
17 Services a leader in preserving, developing the systems by  
18 which the state provides support to local government, as well  
19 as enhancing our overall ability to prepare for and respond,  
20 recover from, major catastrophes.

21 CHAIRMAN ROBERTI: I guess the major catastrophe  
22 that comes to everybody's mind, major of majors, would be the  
23 Big One as far as an earthquake is concerned.

24 Do you have ongoing review on what our preparedness  
25 would be in the event of that kind of a catastrophe?

26 DR. ANDREWS: Yes, we do. As a matter of fact,  
27 tomorrow I'm participating in Southern California with a review  
28



1 of all the local officials and federal officials of where we  
2 are in preparedness.

3 I think that we have done an enormous amount here  
4 in California, and really have a world-class program through  
5 our public education efforts, through our involvement of  
6 private industry, through major commitments that have been made  
7 by local governments across the state. We've developed very  
8 sophisticated systems.

9 But like in many other areas, there are a number of  
10 critical unmet needs that we have at the state. For example,  
11 an Emergency Operations Center that dates from the late 1940s.  
12 So, we have critical needs, and we believe that the strength of  
13 the system is locally; the strength of the system is the  
14 people, and we're working as hard as we can with the available  
15 resources to try to maximize the effectiveness.

16 CHAIRMAN ROBERTI: Thank you.

17 Are there any other questions of Dr. Andrews?

18 Is there anyone in support or opposition in the  
19 audience?

20 SENATOR CRAVEN: Move Dr. Andrews.

21 CHAIRMAN ROBERTI: Senator Craven moves  
22 confirmation be recommended to the Floor.

23 Secretary will call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye.

27 Senator Mello.  
28



1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Mello Aye.

3 Senator Petris.

4 SENATOR PETRIS: Who's this?

5 CHAIRMAN ROBERTI: Dr. Andrews, Office of Emergency  
6 Services.

7 SENATOR PETRIS: I wanted to ask him some  
8 questions. Sorry about that.

9 CHAIRMAN ROBERTI: Well, I think you missed, unless  
10 you want to re-open it.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Can I re-open it for a few  
13 minutes?

14 CHAIRMAN ROBERTI: Why don't we vote, and then  
15 we'll do something about that. You're abstaining.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Craven Aye.

19 Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 SECRETARY WEBB: Roberti Aye.

22 CHAIRMAN ROBERTI: The vote is four to zero;  
23 however, before the vote is announced formally, Senator Petris  
24 has questions.

25 SENATOR PETRIS: Thanks very much. My apologies to  
26 you, Mr. Chairman, and to the nominee.

27 My concerns are raised as a result of the fire in  
28





1 Oakland and emergency things. We had a great big meeting, and  
2 Dr. Andrews made a report and so forth. I wasn't able to stay  
3 for the whole thing.

4 I wanted to get the Director's views on legislation  
5 I've been working on and see if we're on the right track. I  
6 don't know to what extent you're informed on it, but I have  
7 about five bills, but the keys ones have to do with the  
8 necessity for your Office to develop a plan, a standardization,  
9 a better command post-type situations. Maybe you're familiar  
10 with the legislation.

11 You can just tell me, do you think we're headed in  
12 the right direction and you would be supportive? Or do you  
13 think we need to make changes, and so forth?

14 In the latter part of March, some of the people  
15 I've been meeting with had met with you, and they expressed  
16 their concerns about proposed changes to the fire service.  
17 They were very impressed with you overall, I might state that  
18 up front, but they do have some reservations, and they'd like  
19 you to spell out your position on this overall new scheme, and  
20 see how they fit into it, and how they can improve the program  
21 based on lessons we learned in that particular fire.

22 DR. ANDREWS: Let me answer it in a couple ways.

23 First, I think that the -- the general thrust of  
24 SB 1841 is one that is entirely in keeping with the direction I  
25 think we need to go in the state to enhance our preparedness  
26 for the catastrophic emergencies.

27 It's the tradition in California for a great deal  
28



1 of local option in terms of how the emergency systems are  
2 structured. And that local option works very effectively in  
3 most emergencies, but in really big emergencies, there is a  
4 need for a greater standardization.

5 In a de facto way, that standardization has  
6 occurred slowly, mainly through the initial development by the  
7 fire services of the Incident Command System, and the  
8 Multi-Agency Coordination System, and then that has slowly  
9 started to infiltrate other communities and other parts,  
10 functions, within Emergency Services.

11 SENATOR PETRIS: I understand the Incident Command  
12 System is already being copied around the country.

13 DR. ANDREWS: Oh, yes. It's a model that's used on  
14 a nationwide basis. It's a model that's used by the federal  
15 government. And it's, again, proved remarkably successful.

16 So that the effort that SB 1841 represents, to try  
17 to achieve a greater degree of standardization so that the  
18 groups that provide mutual aid and the groups that receive  
19 mutual aid fit into a common command structure, I think, is  
20 very appropriate and very timely.

21 The interest and the concerns, and I think where we  
22 need to be attentive, is to make sure that the systems that we  
23 recommend and develop are equally applicable across a number of  
24 different functions. That is that not only the fire services,  
25 but law enforcement, and emergency medical, emergency services  
26 as such, public works, can all share a common system. And  
27 again, I think the Incident Command System is the basis for  
28



1 that.

2 And secondly, that the system is equally applicable  
3 in large jurisdictions, like Oakland, and San Francisco, and  
4 Los Angeles, as well as in the very small and rural  
5 jurisdictions.

6 But the general thrust of 1841, I'm very supportive  
7 of. Our staff has been working with your staff on that  
8 measure, as well as I've got our Training Institute assessing  
9 how much of the training functions that would be -- would  
10 follow from that bill that we might be able to accomplish  
11 through redirection.

12 SENATOR PETRIS: Now on mutual aid, one of the  
13 concerns expressed was that your office recommends that a  
14 county fire chief, or whoever is the highest ranking, would  
15 have to put in a request through OES. But the problem is that  
16 often the OES structure is staffed by 9-5 people, and there's  
17 nobody around at a critical time.

18 The question is, how do you address that problem?

19 DR. ANDREWS: Well first of all, our -- in each of  
20 our state OES regional offices, we do have 24-hour duty  
21 officers. That is not the case in all the counties, but we  
22 have never proposed -- we have considered a number of potential  
23 reorganization schemes, but I do not --

24 SENATOR PETRIS: They pointed this out in contrast  
25 to the fire, local fire chief, who has a 24-hour situation.

26 DR. ANDREWS: Exactly.

27 I do not advocate, and try to make clear to the  
28





1 fire services, would not support without their recommendation  
2 any fundamental change to the fire mutual aid system that would  
3 put the area coordinators and the regional coordinators and the  
4 operational area coordinators of fire under any other function.  
5 That system works well. There's no reason to tamper with that  
6 system. The challenge is to make that system work in an  
7 integrated way with the other systems.

8 SENATOR PETRIS: Now, the program carried by  
9 Senator Campbell of FIREScope, is that in place?

10 DR. ANDREWS: FIREScope is a number of different  
11 things, some of it going back to the early 1970s. I was out of  
12 the initial FIREScope effort that the Incident Command System  
13 was essentially developed.

14 FIREScope is also a specific operation that we have  
15 in Southern California with the Department of Forestry and fire  
16 protection with the U.S. Forest Service in managing large  
17 wildland fires in Southern California.

18 It's also a decision process, by which the fire  
19 service in California makes changes to their own system.

20 Senator Campbell's legislation, if we're talking  
21 about the same bill, was to expand that more widely in the  
22 state, although it is basically in place on a statewide basis,  
23 but also, I think, there was a \$20 million appropriation as  
24 part of it. My understanding is that that was the problem.

25 SENATOR PETRIS: Yes, they've had cuts. They've  
26 had budget cuts along with everybody else. One of the  
27 questions is, are they functioning? Are they able to be  
28



1 functional under the current budget constraints?

2 DR. ANDREWS: Well, I've indicated to the Fire  
3 Advisory Committee that I would work with them in any changes  
4 that might be needed in the fire services, and that I  
5 specifically supported the FIREScope concepts, supported the  
6 systems that came out of it.

7 The last two years, through funds that I helped  
8 secure for an urban search and rescue program, we put money  
9 into the FIREScope decision making process to develop the  
10 command structure for urban search and rescue. So, I'm a  
11 strong supporter of FIREScope and will do everything that I can  
12 to enhance the program.

13 SENATOR PETRIS: Okay, thank you very much.

14 Thank you again, Mr. Chairman.

15 CHAIRMAN ROBERTI: The role is still open.  
16 Secretary, call the roll one more time.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Petris Aye.

20 Five to zero.

21 CHAIRMAN ROBERTI: The vote is five to zero;  
22 confirmation is recommended to the Floor.

23 Congratulations.

24 DR. ANDREWS: Thank you.

25 CHAIRMAN ROBERTI: The next appointment is a member  
26 of the Medical Board of California, Division of Medical  
27 Quality, Dr. Clarence Avery.  
28



1                   Doctor, thank you for waiting. We will ask you  
2 what we ask the Governor's appointees, why you feel you're  
3 qualified to retain this position?  
4

5                   DR. AVERY: Thank you, Senator Roberti.

6                   I wish to be a member of the Medical Board of  
7 California to do what I can to assure that all the people of  
8 the State of California receive the quality of medical care  
9 that they deserve.

10                  And number two, to deal with those members of the  
11 profession who do not perform up to standards, and who betray  
12 the public confidence and embarrass the profession.

13                  I have a long experience in dealing with matters of  
14 quality assurance and of discipline in the profession at  
15 local, state and national levels, and I believe that I can  
16 perform the job satisfactorily.

17                  CHAIRMAN ROBERTI: Thank you very much, Doctor.

18                  Are there any questions?

19                  I think we're going to let you off easy.

20                  DR. AVERY: Thank you.

21                  SENATOR PETRIS: May I move it?

22                  CHAIRMAN ROBERTI: Senator Petris moves  
23 confirmation be recommended to the Floor.

24                  Secretary will call the roll.

25                  SECRETARY WEBB: Senator Beverly.

26                  SENATOR BEVERLY: Aye.

27                  SECRETARY WEBB: Beverly Aye.

28                  Senator Mello. Senator Petris.





1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye.

3 Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Craven Aye.

6 Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 SECRETARY WEBB: Roberti Aye.

9 CHAIRMAN ROBERTI: The vote is four to zero;  
10 confirmation is recommended to the Floor.

11 Congratulations, Doctor.

12 [Thereupon this portion of the  
13 Senate Rules Committee hearing  
14 was terminated at approximately  
15 6:07 P.M.]

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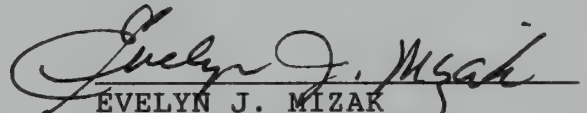
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27<sup>th</sup> day of April, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter







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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



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SENATE DOCUMENTS

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 29, 1992  
2:10 P.M.



1 SENATE RULES COMMITTEE  
2 STATE OF CALIFORNIA  
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6 HEARING  
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12 STATE CAPITOL  
13 ROOM 113  
14 SACRAMENTO, CALIFORNIA  
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18 WEDNESDAY, APRIL 29, 1992  
19 2:10 P.M.  
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25 Reported by:  
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27 Evelyn J. Mizak  
28 Shorthand Reporter



APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

WILLIAM E. MAYER, M.D., Director  
Department of Mental Health

FRED MILKIE, M.D., Member  
Medical Board of California  
Division of Licensing

SENATOR WADIE DEDDEH

ROBERT L. HARVEY, Member  
Unemployment Insurance Appeals Board

RONALD JOSEPH, Chief Deputy Director  
Department of Health Services

CARL E. RAUSER, Chief Deputy Director  
Department of Mental Health





INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
WILLIAM E. MAYER, M.D., Director Department of Mental Health	1
Background and Experience	1
Questions by CHAIRMAN ROBERTI re:	
Legislative Mental Health Advocate	2
Motion to Confirm	4
Committee Action	5
FRED MILKIE, M.D., Member Medical Board of California Division of Licensing	5
Introduction by SENATOR WADIE DEDDEH	5
Background and Experience	6
Motion to Confirm	7
Committee Action	7
ROBERT L. HARVEY, Member Unemployment Insurance Appeals Board	8
Background and Experience	8
Motion to Confirm	9
Committee Action	9
RONALD JOSEPH, Chief Deputy Director Department of Health Services	10
Background and Experience	10
Question by SENATOR PETRIS re:	
Department's Response to Court Ruling on Prop. 99 Transfer of Funds	12
Motion to Confirm	13



1		
2	Committee Action	13
3	CARL E. RAUSER, Chief Deputy Director	
4	Department of Mental Health	14
5	Background and Experience	14
6	Motion to Confirm	15
7	Committee Action	16
8	Termination of Proceedings	16
9	Certificate of Reporter	17
10		
11		
12		
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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: We're going to take Governor Appointees. We are going to take up Dr. Mayer, then Dr. Milkie, and then Senator Marks with two rule waivers.

Dr. Mayer has sat through innumerable hearings, and it's not fair that he shouldn't be taken up first.

DR. MAYER: Thank you, sir.

So, Doctor, for Director of Mental Health, and we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position.

DR. MAYER: Thank you, Senator Roberti, Senator Beverly, Senator Craven.

I believe that I'm well qualified for this position because I have been a psychiatrist, fully trained, for more than forty years. I had the great privilege of serving in this office during the Reagan Administration, and in view of the complexity of mental health, it's been very useful that I've served as Director of Mental Health in four of the counties in California, from the second smallest to the second largest, and have, in addition, seen thousands of patients, literally.

So that, with this background, and also having run the mental health system for the federal government, it goes to get a kind of an overview since we have a close relationship with the feds.

I believe that those things make me qualified.

CHAIRMAN ROBERTI: Thank you very much, Doctor.





1 Is there anyone here in opposition to Dr. Mayer's  
2 appointment?

3 I think what we need is, at the legislative level, is  
4 a mental health advocacy so that the mental health programs  
5 don't take the brunt of cutbacks.

6 DR. MAYER: I agree.

7 CHAIRMAN ROBERTI: I guess I'd like your observation  
8 on that.

9 DR. MAYER: Well, you've touched on a very  
10 significant point, and that is the fact that mental health  
11 alone, of all the major health activities, has never been  
12 treated at the federal or state level as any kind of an  
13 entitlement.

14 I'm wary of entitlements, as most people are. But  
15 the fact is that mental health afflicts -- or, mental illness  
16 afflicts a huge number of people in this country and in  
17 California. We see in the mental health system in our state  
18 about 320,000 patients a year as outpatients, and another 10,000  
19 or more in the state hospitals.

20 And the problem with mental health over the years has  
21 been that the truly seriously mentally ill have received short  
22 shrift. From the very beginning of the country, it was decided  
23 that it was a state responsibility to take care of the mentally  
24 ill. This state started out by locking them up on a prison ship  
25 in San Francisco Bay almost as one of its first acts. And  
26 psychiatry, following the advent of Freudian psychoanalytic  
27 theory, focused very largely on people that are not perceptibly  
28



1       disable, and not perceptibly sick.

2               So, it wasn't until World War II, actually, that it  
3       became clear that there is a category of people who are very  
4       emotionally disturbed but who can be treated very briefly, and  
5       that there is another category of people so sick that society  
6       essentially rejects them and relegates to state hospitals.

7               In the '50s, when this state passed the Short-Doyle  
8       Act, and then subsequently the Lanterman-Petris-Short Act, it  
9       leaped ahead of most of the other states in this country by  
10      recognizing the fact that the best place to treat people was  
11      close to their homes and close to their families. And there  
12      was, for a few years, a great surge of community mental health  
13      in this state. And as partly as a result of that -- and the  
14      idea of Short-Doyle originally was to take care of seriously  
15      sick people who were getting out of state hospitals, but what  
16      happened was that the community mental health clinics in this  
17      state increasingly were seeing ambulatory patients, didn't need  
18      hospitalization except perhaps briefly, who sometimes kept  
19      coming back for therapy week after week, sometimes for years,  
20      and the public was very confused about whether this was a  
21      legitimate health enterprise or something that just contributed  
22      to quality of life, or something nice to have.

23              And when the Civil Rights movement, and the Civil  
24      Liberties movement in this country gained great currency during  
25      the '60s, we saw an evacuation of patients from the state  
26      hospitals, not because psychiatrists wanted them to get out of  
27      the state hospitals or mental healthers, but because it became  
28



1 legally impossible to keep people against their will, and it  
2 became very difficult to treat patients who, although obviously  
3 sick, obviously very damaged and confused, unless they met the  
4 very strict requirements of the law for being so disabled that  
5 they couldn't provide their food, or clothing, or shelter, or  
6 were overtly dangerous, no matter how sick they were, you  
7 couldn't treat them.

8           And we face today, in this state and in all states,  
9 but particularly those with large cities, we face a real problem  
10 of large numbers of homeless mentally ill people on the streets  
11 who don't want to be treated, whom we cannot treat against their  
12 will, and who are truly falling between the cracks.

13           So, I think the future of mental health in California  
14 is going to have to involve some way to extend treatment to  
15 people who are justifiably fearful of being locked up, who don't  
16 want to go to the state hospital; who want more to say about  
17 what's done for them. And yet, who can be managed in a way that  
18 they can resume some kind of an acceptable role in society,  
19 which the great majority of mentally ill people can do.

20           CHAIRMAN ROBERTI: Thank you, Doctor.

21           SENATOR CRAVEN: Move.

22           CHAIRMAN ROBERTI: Senator Craven has moved  
23 confirmation be recommended to the Floor.

24           Secretary will call the roll.

25           SECRETARY WEBB: Senator Beverly.

26           SENATOR BEVERLY: Aye.

27           SECRETARY WEBB: Beverly Aye.  
28





1 Senator Mello. Senator Petris. Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Craven Aye.

4 Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 SECRETARY WEBB: Roberti Aye.

7 CHAIRMAN ROBERTI: The vote is three to zero;  
8 confirmation is recommended to the Floor.

9 Congratulations, Doctor.

10 DR. MAYER: Thank you very much, sir. It's a real  
11 pleasure.

12 CHAIRMAN ROBERTI: The next appointment, because  
13 Dr. Milkie has to catch a 3:00 o'clock flight, and Senator Wadie  
14 Deddeh is here to introduce him, is Dr. Fred Milkie, Member of  
15 the Medical Board of California, Division of Licensing.

16 Dr. Milkie, we'll ask you the same question we ask  
17 all the gubernatorial appointees, and that is why you feel  
18 you're qualified to assume this position?

19 DR. MILKIE: Thank sir. I believe the Senator has a  
20 few words.

21 SENATOR DEDDEH: Mr. Chairman, Members, in my 25  
22 years in the Legislature, this is the second time I've appeared  
23 before this body to speak strongly on behalf of a candidate in  
24 whom I believe so very much.

25 Dr. Milkie is a San Diegan by birth. Unfortunately  
26 we lost him to Los Angeles. He's a noted ophthalmologist. He's  
27 a man with a great integrity, great professionalism, and to his  
28



1 credit, the two Governors have been -- appointed him to this  
2 position, and now he's been re-appointed by Governor Wilson.

3 I'm here to extend a helping hand, to say I support  
4 Dr. Milkie's appointment and confirmation, Mr. Chairman.

5 CHAIRMAN ROBERTI: Thank you very much, Senator.

6 Dr. Milkie.

7 DR. MILKIE: Yes, Senators.

8 I was fortunate enough to be appointed by the former  
9 Governor Deukmejian to the Medical Board, Division of Licensing,  
10 as you suggested. I had the opportunity of serving as the Vice  
11 President of the Medical Board, Division of Licensing, and I was  
12 also President of the Division of Licensing.

13 I subsequently became Vice President of the Medical  
14 Board, and now I am currently serving as President of the  
15 Medical Board, and I was re-appointed by Governor Wilson.

16 I think in the time that I have spent on the Board,  
17 I've shown certain ability to have some leadership qualities  
18 that were demonstrated.

19 I've had numerous responsibilities on the board, and  
20 among them are improving the oral examination that's given to  
21 all the candidates that come into the State of California for  
22 licensure. In addition, I've surveyed many hospitals for a  
23 post-graduate residency training program, and I've drafted  
24 regulations to improve the standards of care -- not care,  
25 forgive me -- of education that's rendered to these candidates.  
26 This, of course, is in the interest of public protection and  
27 assuring that these doctors are well trained.  
28



1                   And I -- my most recent charge was the implementation  
2 of the regulations for SB 2036 for Senator McCorquodale, and I  
3 just think that I try and be fair, and honest, and above-board,  
4 and do the best I can. That's all I have to say.

5                   CHAIRMAN ROBERTI: That's all any of us can do.  
6 Thank you, Doctor.

7                   Is there anyone in opposition?

8                   Do I hear a motion?

9                   SENATOR CRAVEN: So move.

10                  CHAIRMAN ROBERTI: Senator Craven moves Dr. Milkie's  
11 confirmation be recommended to the Floor.

12                  Secretary will call the roll.

13                  SECRETARY WEBB: Senator Beverly.

14                  SENATOR BEVERLY: Aye.

15                  SECRETARY WEBB: Beverly Aye.

16                  Senator Mello. Senator Petris. Senator Craven.

17                  SENATOR CRAVEN: Aye.

18                  SECRETARY WEBB: Craven Aye.

19                  Senator Roberti.

20                  CHAIRMAN ROBERTI: Aye.

21                  SECRETARY WEBB: Roberti Aye.

22                  CHAIRMAN ROBERTI: The vote is three to nothing;  
23 confirmation's recommended to the Floor.

24                  Congratulations.

25                  DR. MILKIE: Than you very much, sir.

26                               [Thereupon the Rules Committee  
27 acted upon legislative agenda  
28





1 items.]

2 CHAIRMAN ROBERTI: The next appointment is that of  
3 Mr. Robert L. Harvey, Member of the Unemployment Insurance  
4 Appeals Board.

5 Mr. Harvey has been before us before, so you can tell  
6 us why you feel you're qualified to retain this position.

7 MR. HARVEY: Senator Roberti, Members of the  
8 Committee, as the Pro Tem pointed out, I've twice been before  
9 this Committee seeking your endorsement to serve as a Member of  
10 the Unemployment Insurance Appeals Board.

11 I am an attorney. I've practiced law both for legal  
12 aid societies, for major corporations, and I'm also in private  
13 practice. I have knowledge of the law, compassion for  
14 individuals.

15 I have not only worked to serve the people of the  
16 State of California, but I've been involved with national  
17 activities affecting the national unemployment insurance and  
18 appeals. I served two years as President of the National  
19 Association of Unemployment Insurance Appellate Boards; as legal  
20 aid consultant to the Department of Labor regarding unemployment  
21 insurance issues, both appeals activities and the basic  
22 unemployment insurance program.

23 At the present time, the U.I. Appeals Board, because  
24 of the economy, is dealing with a major challenge: trying to  
25 respond to the needs of the people of this state. All of our  
26 administrative law judges, our clerks, our secretaries are  
27 dedicated to this cause.  
28



1 I'm asking you to endorse me to continue to provide  
2 the tools and the resources our staff needs to carry out their  
3 responsibility to the people of this state.

4 CHAIRMAN ROBERTI: Thank you very much, Mr. Harvey.

5 Are there any questions? Is there any opposition?

6 SENATOR CRAVEN: Move Mr. Harvey.

7 CHAIRMAN ROBERTI: Senator Craven moves Mr. Harvey's  
8 confirmation be recommended to the Floor.

9 Our own appointee speaks highly of you. I've  
10 recommended you to the Governor, so I suspect he would have done  
11 it anyway, but I was glad to add my word of support.

12 Secretary will call the roll.

13 SECRETARY WEBB: Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye.

16 Senator Mello. Senator Petris. Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Craven Aye.

19 Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 SECRETARY WEBB: Roberti Aye.

22 CHAIRMAN ROBERTI: The vote is three to zero;  
23 confirmation is recommended to the Floor.

24 Congratulations.

25 MR. HARVEY: Thank you, Senators.

26 CHAIRMAN ROBERTI: You're welcome.

27 [Thereupon the Rules Committee  
28



1                   acted upon legislative items  
2                   on the agenda.]

3                   CHAIRMAN ROBERTI: The next Governor's appointee is  
4 Mr. Ronald Joseph, Chief Deputy Director of the Department of  
5 Health Services.

6                   We'll ask you that same question we ask all the  
7 Governor's appointees: why you feel you're qualified to assume  
8 this position?

9                   MR. JOSEPH: Senator Roberti, Members of the  
10 Committee, my name is Ron Joseph, and I want to thank you for  
11 the opportunity to come here today to present my qualifications  
12 as Chief Deputy Director of Operations for the Department of  
13 Health Services.

14                   I'm a native Californian, having been raised in the  
15 state, and attended the California State Universities. I'm also  
16 a career civil servant, having served for 18 years in California  
17 state service, beginning in 1973, as a Budget Analyst at the  
18 Department of General Services, and rising through a series of  
19 staff supervisory and managerial positions, serving as  
20 Administration Deputy at the Contractors' State License Board at  
21 the Department of Consumer Affairs during a time of particular  
22 challenge that comes with growth and modernization.

23                   Following that period, I moved to the Department of  
24 Economic Opportunity, first as the Deputy Director for Low  
25 Income Energy Assistance Programs, and then as Chief Deputy  
26 Director of the Department. This experience gave me a keen  
27 understanding of the importance of working openly and  
28





1 cooperatively with a broad range of community-based interests in  
2 pursuit of the public policy goals, which are aimed at  
3 benefiting all the members of our diverse society.  
4

5 I feel that the results of those endeavors was the  
6 development of many local service programs which continue to  
7 this day to provide structures of opportunity for those in need.

8 More recently, I served as the Assistant Chief  
9 Executive Officer for the State Teachers' Retirement System,  
10 providing administrative direction for the system, as well as  
11 guiding the design, review, and funding of pension programs.  
12 This included programs around the design of health insurance  
13 models for retired teachers, where I learned first-hand of the  
14 impacts on populations which do not have adequate access to  
15 affordable health care.

16 This is a brief summary of my professional  
17 development in state service before coming to the Department of  
18 Health Services. But briefly and more importantly, I would like  
19 to share with you my goals at the Department of Health Services.

20 There is no question that the fiscal conditions which  
21 we face make this a difficult time in the history of public  
22 policy and program delivery. Dr. Coye has nevertheless come to  
23 the Department with the progressive vision to moving -- to move  
24 the public health agenda in these times. Working closely with  
25 Dr. Coye, it is my intention to assist her in implementing this  
26 vision within the Department and within the communities that we  
27 serve.

28 I believe that this will best be accomplished by



1 working to open the Department of Health Services and make it  
2 accessible to those communities with which we share common goals  
3 of improving public health. To that end, we're striving to  
4 enhance our cooperative technical assistance efforts so that the  
5 Department serves as a partner with the community of service  
6 providers.

7  
8 It is also my commitment to strive for consistency in  
9 the Department's response to important public health issues, and  
10 openness in dealing with individuals and groups with which we  
11 have a shared interest.

12 I am also available to answer any questions which you  
13 may have.

14 Thank you.

15 CHAIRMAN ROBERTI: Is there anyone here in  
16 opposition? Are there any questions of Mr. Joseph? Senator  
17 Petris.

18 SENATOR PETRIS: I'm interested in Prop. 99 and the  
19 dispute over the transfer of funds. Since the Court ruled that  
20 that can't be done, what disposition is the Department making?

21 MR. JOSEPH: Yes, sir.

22 As, Senators, as you're well aware, we received the  
23 Court ruling. The Court ruling was made on Friday. We are  
24 still awaiting the final statement from the Court. We have not  
25 seen the Court's final ruling as yet.

26 However, our reaction to it is the reaction of any  
27 state department in the face of a Superior Court ruling. We  
28 need to sit down, look at what the Court has ordered us to do;



1 determine how we achieve the desires of the Court, and the  
2 resulting impacts, both positive and negative, on programs and  
3 other programs, in this case, that would have been funded.  
4

5 From that, we are going to have the responsibility to  
6 come forward and put before you a recommendation.

7 CHAIRMAN ROBERTI: Senator Craven.

8 SENATOR CRAVEN: I was going to make a motion to  
9 recommend confirmation.

10 CHAIRMAN ROBERTI: Senator Craven makes the motion  
11 that the appointment be recommended to the Floor, of Chief  
12 Deputy Director Ronald Joseph.

13 We asked for opposition; Secretary will call the  
14 roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye.

18 Senator Mello. Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Petris Aye.

21 Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Craven Aye.

24 Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 SECRETARY WEBB: Roberti Aye.

27 CHAIRMAN ROBERTI: The vote is four to zero;  
28 confirmation's recommended to the Floor.





1                   Congratulations.

2                   MR. JOSEPH: Thank you very much.

3                   CHAIRMAN ROBERTI: The next appointment is Carl E.  
4 Rauser, Chief Deputy Director, Department of Mental Health.

5                   MR. RAUSER: Thank you, Mr. Chairman and Members.

6                   CHAIRMAN ROBERTI: Mr. Rauser, we'll ask you what we  
7 ask all the Governor's appointees, and that is why you feel  
8 you're qualified to assume this position?

9                   MR. RAUSER: Shortly after graduating from college, I  
10 went to work for the old State Department of Mental Hygiene.  
11 And shortly thereafter, I became the Chief of Budgets, and the  
12 Chief of the Local Mental Health Program Section, during the  
13 period of time when we were installing the systems that were  
14 necessary for the implementation of the Lanterman-Petris-Short  
15 Act. Many of those systems that were installed and developed in  
16 that time are still in place and working for the system today.

17                   During the development of the State Department of  
18 Health, the Department of Mental Hygiene was incorporated into  
19 the State Department of Health. I worked for a period of time  
20 in the Director's Office, coordinating the consolidation of that  
21 department.

22                   I subsequently went to Chief of the Financial  
23 Management Branch, and then the Chief of the Mental Health  
24 Program. The Mental Health Program became -- subsequently  
25 became the State Department of Mental Health when the State  
26 Department of Health was broken up into various departments.

27                   In the late '70s, I left state service and went to  
28



1 work in private enterprise. I had various contracts with  
2 counties and with private corporations for program development  
3 and for program efficiencies. I worked with Senator Maddy on  
4 the passage of SB 900 that subsequently has led to and was the  
5 framework for realignment legislation.

6 During last spring, I worked with Senator  
7 McCorquodale and Mr. Bronzan on the realignment subcommittee, on  
8 the realignment work group. And then last summer, when  
9 Dr. Mayer was appointed Director, he asked me to come back to  
10 work for the state, and I subsequently did.

11 CHAIRMAN ROBERTI: Thank you, Mr. Rauser.

12 Are there any questions? Is there any opposition in  
13 the audience?

14 SENATOR CRAVEN: Move Mr. Rauser.

15 CHAIRMAN ROBERTI: Senator Craven moves Mr. Rauser's  
16 confirmation be recommended to the Floor.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye.

21 Senator Mello. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye.

24 Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Craven Aye.

27 Senator Roberti.  
28



1 CHAIRMAN ROBERTI: Aye.

2 SECRETARY WEBB: Roberti Aye.

3 CHAIRMAN ROBERTI: The vote is four to zero;  
4 confirmation is recommended to the Floor.

5 Congratulations.

6 MR. RAUSER: Thank you.

7 [Thereupon this portion of the  
8 Senate Rules Committee hearing  
9 was terminated at approximately  
10 3:00 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29<sup>th</sup> day of April, 1992.

  
EVELYN J. MIZAK  
Shorthand Reporter





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